IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 211

**HALLIBURTON OIL WELL CEMENTING COMPANY,**

**Appellant**

*versus*

**JAMES S. REILY, COLLECTOR OF REVENUE, STATE OF LOUISIANA (Since Succeeded by Robert L. Roland, Who Was Duly Succeeded by Roland Cocreham),**

**Appellee**

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**ON APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA**

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## JURISDICTIONAL STATEMENT

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## JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment and decision of the Supreme Court of the State of Louisiana* entered in this suit on the 20th day of March, 1961, which set aside and reversed the judgment of the Nineteenth Judicial District Court of the State of Louisiana, in and for the Parish of East Baton Rouge. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

* The highest court of the State of Louisiana.

## OPINIONS BELOW

The opinion of the Supreme Court of the State of Louisiana is reported at _____ La. _____, 127 So. 2d 502, and a copy thereof is attached hereto as Appendix "A," p. 49, *infra*. The opinion of the trial court, September 25, 1959, is not reported, but is found at p. 65, et seq. of the Record.

## JURISDICTION

This is a suit for a refund of tax moneys paid under protest. The taxing statute in question is the Louisiana "Sales Tax,"* commonly called the "Sales and Use Tax." The suit for refund is specifically authorized by, and properly brought under, the provisions of Louisiana Revised Statutes 47:1576. This is uncontested.

The Louisiana Supreme Court held that the Louisiana Collector of Revenue may "discriminate" against, and tax more heavily, a taxpayer who moves his goods across state lines (as compared to the taxpayer engaged in purely intrastate business); that Louisiana may thus levy an excise tax upon the privilege of moving goods in interstate commerce.

The issue is whether or not such frankly discriminatory taxation is offensive to the Constitution of the United States, including particularly the Interstate Commerce Clause (Article I, Sec. 8, Clause 3), and/or the Fourteenth Amendment. The trial court held that the discriminatory excise tax was a burden upon interstate commerce, which was violative of the Federal Constitution, and that the heavier excise tax (falling solely upon the taxpayer who brought his goods into Louisi-

* La. R.S. 47:301, et seq. See Appendix "B," p. 69, infra.

ana, across the state line) was also a denial of due process and of the protection of the laws, guaranteed by the Fourteenth Amendment of the Federal Constitution. The Louisiana Supreme Court reversed and held that Louisiana may collect the heavier excise tax from the individual who uses chattels moved into Louisiana from outside the state, while exempting from the same tax burden the individual who uses chattels produced in Louisiana, and which thus lack the element of interstate transportation.

The Supreme Court of the State of Louisiana initially rendered its decision on the 15th day of February, 1961. Application for Rehearing was timely filed by present appellant, on the 27th day of February, 1961, and said Application for Rehearing suspended the finality of the decision of the Louisiana Supreme Court until that court denied the Application for Rehearing, on the 20th day of March, 1961, at eleven o'clock a.m. (Louisiana Code of Civil Procedure, Articles 2166-2167).

Notice of Appeal to the Supreme Court of the United States was timely filed by appellant, in the Supreme Court of the State of Louisiana, on the 2nd day of June, 1961.

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment of the Louisiana court, on direct appeal, in this case: *Henneford v. Silas Mason Company*, 300 U. S. 577, 57 S. Ct. 524, 81 L. Ed. 814 (1936); *Northwestern States Portland Cement Company v. Minnesota*, 358 U. S. 450; 79 S. Ct. 357, 3 L. Ed. 2d 421, 67 ALR 2d 1292 (1959); *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U. S. 389, 72 S.

Ct. 424, 96 L. Ed. 436 (1952); *Nippert v. City of Richmond*, 327 U. S. 416, 66 St. Ct. 586, 90 L. Ed. 760, 162 ALR 844 (1946); *Freeman v. Hewitt*, 329 U. S. 249, 67 S. Ct. 274, 91 L. Ed. 265 (1946).

The Louisiana taxing statute, the validity of which is attacked, is the Louisiana Sales and Use Tax, Louisiana Revised Statutes of 1950, Title 47, Sections 301-318. A copy of that statute is attached hereto, as Appendix "B", *infra*, p. 69.

## QUESTIONS PRESENTED

The issue herein arises within the following framework:

1. The Louisiana "sales tax" (as distinguished from the "use tax"), like the sales tax of other states, is levied only upon transactions which occur within the borders of the state, i.e., only upon intrastate transactions.

2. It was found (in Louisiana and elsewhere) that such sales taxes, falling only upon the intrastate transactions, tended to drive business out of the state. People would go outside the state for their major purchases, thus avoiding the intrastate **sales tax.**

3. Accordingly "compensating" **Use Tax** statutes were enacted **to prevent such discrimination** against local merchants. The use tax falls solely upon the use, within the state, of goods acquired outside the state and then brought into the state across the interstate borderline. The Use Tax was designed to prevent discrimination against intrastate transactions. In Louisiana, the two taxes were combined into one

statute known as "The Sales and Use Tax" Statute (La. R.S. 47:301, et seq.). Appendix "B," *infra*, p. 69.

4. Since the Use Tax falls only upon the situation in which there has been an **interstate** movement of goods, such a statute was quickly attacked as repugnant to the interstate commerce clause of the Federal Constitution.

5. The Use Tax was upheld by this court, as constitutional, and NOT a discriminatory burden upon interstate commerce, because (in the case then at issue) it did not exceed the comparable sales tax of the same state and was merely complementary to the sales tax and precisely equal to the sales tax, and—therefore—the use tax did not "discriminate" against the interstate transaction. *Henneford v. Silas Mason Company*, 300 U. S. 577, 57 S. Ct. 524, 81 L. Ed. 814 (1936).

6. In a case, however, where the use tax of a state, falling solely on **interstate** transactions, levies a burden which is more onerous than the sales tax, falling on comparable intrastate transactions, then the use tax loses the fiat of the *Henneford* decision, and is unconstitutional because it does discriminate against the transactions which are in interstate commerce. This is the essential position of appellant taxpayer.

7. It is to be noted that the Louisiana Sales and Use Tax is an **excise** tax levied upon the privilege of performing an act. *Mouledoux v. Maestri*, 197 La. 525, 2 So. 2d 11 (1941). See also *Brandtgen & Kluge v. Fincher*, 111 P. 2d 979, 980, 44 Cal. App. Supp. 939, and Words & Phrases, Vol. 15 (a), p. 171, verbo "Excise."

* * *

The issue here is whether or not the State of Louisiana

(through its Collector of Revenue) may openly and avowedly discriminate against the taxpayer whose operations cross interstate border lines, and in favor of the competing taxpayer who operates wholly within Louisiana boundaries.

The Louisiana Supreme Court has held that the Louisiana Use Tax may be designed and enforced so as to place a heavier excise tax burden upon interstate operations than the excise tax burden of the Sales Tax which falls upon comparable intrastate operations. The decision is tantamount to a holding that Louisiana may erect a wall of taxes at the state line. The incidence of the additional excise tax burden falls upon the act of crossing the state border line.

* * *

Thus, the following questions are presented by this appeal:

1. Whether or not the State of Louisiana, through its Collector of Revenue, may apply an excise tax, the Louisiana Sales and Use Tax, so that the burden thereof bears more heavily upon a taxpayer who comes into Louisiana from outside the state than the burden of the same tax statute would bear upon a Louisiana resident engaged in precisely the same economic activity as that of the more heavily taxed non-resident.

2. Whether or not the Supreme Court of the State of Louisiana may constitutionally render a judgment which specifically approves and authorizes the State of Louisiana to discriminate against non-residents of Louisiana, doing business in Louisiana, and in favor of residents of Louisiana, by inflict-

ing a discriminatory excise tax upon the non-residents, which is heavier than the comparable excise tax burden which falls upon Louisiana residents engaged in precisely the same activity.

3. Whether or not the State of Louisiana may tax (via its Sales and Use Tax) the non-resident ("the stranger from afar") more heavily than it would tax a resident Louisiana citizen engaged in the same identical business operation, in view of the fact that the Supreme Court of the United States has held that:

> "The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce."
>
> *Best & Co. v. Maxwell*, 311 U. S. 454, 61 S. Ct. 335, 85 L. Ed. 275 (1940).

and in view of the fact that the requirement set up by the Supreme Court of the United States, in *Henneford v. Silas Mason Company*, 300 U. S. 577, 57 S. Ct. 524, 81 L. Ed. 814 (1936), for a valid state use tax, is as follows:

> "Equality is the theme that runs through all sections of the statute. . . .
>
> "When the account is made up, the stranger from afar is subject to no greater burdens as a consequence of ownership than the dweller within the gates. The one pays upon one activity or incident, and the other upon another, but the sum is the same when the reckoning is closed. . . ."

"In each situation the burden borne by the owner is balanced by an equal burden where the sale is strictly local. . . . ."

4. Whether or not the Louisiana Sales and Use Tax Statute, as applied by the Louisiana Collector of Revenue so as to tax non-residents* more heavily than he would apply and levy the same excise tax upon Louisiana residents, is offensive to and repugnant to and violative of the Constitution of the United States, including but not limited to the following clauses thereof:

a. **The Interstate Commerce Clause**, being Article I, Section 8, Clause 3, of the Constitution of the United States;

b. **The Due Process Clause**, being a portion of the Fourteenth Amendment to the Constitution of the United States;

c. **The Equal Protection of the Laws Clause**; being a portion of the Fourteenth Amendment to the Constitution of the United States;

it being the principal contention of Halliburton Oil Well Cementing Company (taxpayer herein) that the discriminatory excise tax burden, of which complaint is made, does fall upon persons who conduct a part of their operations outside the State of Louisiana and then cross the state line into Louisiana, whereas said excise tax burden does not fall upon per-

* Of course, the heavier excise tax would also fall on a Louisiana resident who chose to conduct the production part of his operations in another state, and then moved his chattels into Louisiana, for use. It is the multi-state operation and interstate movement which gives rise to the additional tax.

sons who conduct identical operations entirely within the interstate border line of the State of Louisiana, and said taxpayer contends that such discriminatory taxation directly infringes upon the right of regulation of interstate commerce, vested in the Federal Congress, for the reason, among others, that it is an attempt by the State of Louisiana to lay an excise tax on the privilege of engaging in interstate commerce and upon the carrying on of a business in interstate commerce; that the tax statute is arbitrary and discriminatory in violation of the Fourteenth Amendment; that the taxing statute, therefore, is not valid.

## STATEMENT OF THE CASE

There is but one issue of law here—, whether state taxation may discriminate against the multi-state business operation. But it arises upon two different sets of operative facts.*

First: **"The Labor and Shop Overhead Phase"**

In its shops at Duncan, Oklahoma, appellant Halliburton produces and fabricates complex truck-borne oil-well servicing equipment which it uses in Louisiana. See Photographs Annex 8 and Annex 9 to the original Petition (Record, 42-43). Halliburton uses this type of equipment in Louisiana, under contract, but does not sell the equipment. Halliburton is a producer using its own product, sometimes called a "manufacturer-user," or "producer-consumer."

When Halliburton brought the fabricated equipment into Louisiana, it paid a use tax upon the cost to it of the tangible

* Initially there was a Third Phase to this case entitled *"The Cost v. Depreciated Value" phase.* That phase of the case is no longer at issue and appeal is not taken from the decision below, insofar as it relates to this third phase of the case.

physical properties incorporated into the equipment. Louisiana now demands, additionally, a 2% use tax upon the labor and shop overhead expended in assembling and producing the finished item.

If Halliburton had its shops in Louisiana, instead of in Oklahoma, a sales tax would fall upon its operations (i.e., the production and use of an item of equipment) as follows: (1) a sales tax would fall upon the purchase price of the truck chassis when it was purchased by Halliburton and (2) a sales tax would fall upon the purchase price of each item of physical equipment (e.g., motors, pipes, metal, gaskets, etc.) which was purchased by Halliburton for incorporation into the finished product item. But, of course, there would be no sales tax whatsoever, and no use tax whatsoever upon the "labor and shop overhead" which went into the assembly operation, which transformed the raw truck chassis and the other raw metal parts into the complex finished item. This is incontestible and uncontested.

The Collector has stipulated that his position is discriminatory:

> "If Halliburton had purchased its materials, operated its shops, and incurred its Labor and Shop Overhead expenses at a location within the State of Louisiana, there would have been a sales tax due to the State of Louisiana upon the cost of the materials purchased in Louisiana and a Use Tax on materials purchased outside of Louisiana; but there would have been no Louisiana sales tax or use tax due upon the Labor and Shop Overhead." (Stipulation—Par. IV. Record, p. 58)

Nevertheless, says the Collector, because Halliburton has

its shops in Oklahoma, and not in Louisiana, an additional 2% tax must be paid. Because Halliburton operates its construction shops in Oklahoma and not in Louisiana, the Collector would demand a penalty excise tax measured by 2% of the "labor and shop overhead" expended by Halliburton, in its Duncan, Oklahoma, shops.

**The Collector's Ruling:**

The Collector has accorded his discriminatory position the status of a regulation in an open letter, directed to Commerce Clearing House Tax Service, under date of October 10, 1956, reported in CCH Louisiana State Tax Service, Par. 200-115, viz.,

> "(§ 200-115) Letter from Legal Division, Department of Revenue, October 10, 1956.
>
> **"Sales and use tax—Cost basis of direct labor and overhead charges.**
>
> "The cost basis with regard to direct labor and overhead charges where supply items are purchased at retail outside of Louisiana and manufactured, fabricated and assembled **outside of Louisiana** into a finished product which is brought into the state for use solely by the fabricator is the cost to the fabricator of putting the finished product down in Louisiana. This cost includes all cost of acquiring the materials, fabrication and assembly, labor overhead, transportation and other incidental costs.
>
> "See § 60-101-a.
>
> **Question submitted by CCH.**
>
> "What is the cost basis for Louisiana Sales or Use Tax

purposes with regard to direct labor and overhead charges where supply items are purchased at retail **outside of Louisiana** and manufactured, fabricated and assembled **outside of Louisiana** into a finished product which is brought into Louisiana for use solely by the fabricator and not manufactured, held or offered for resale?

**Answer** [By the Collector]

"Louisiana Revised Statutes of 1950, Title 47, Section 302, levies a tax upon the use of each item of tangible personal property in the State at the rate of two per centum (2%) of the 'cost price' of each such item.

" 'Cost price', according to Section 301 of Title 47, Louisiana Revised Statutes of 1950 'means the **actual cost** of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, **labor or service cost, transportation charges** or any other expenses whatsoever.'

"In accordance with these provisions of the law, the basis for the Use Tax in Louisiana, under the circumstances enumerated in your question, is the cost to the fabricator of putting the finished product down in Louisiana. **This cost would include all costs** of acquiring the materials used, fabrication and assembly, **labor, overhead, transportation, and any other costs incident thereto.***

**The Unconstitutionality:**

The Use Tax is fixed at 2% of "cost price" (Sec. 302(A)(2)† and "cost price" is defined as including "labor" (Sec.

* Note that the Collector would tax the very "transportation" which brings the chattel up to the Louisiana line.

† See Appendix "B," infra, p. 69.

301(3).* The Collector (sustained by the Louisiana Supreme Court) therefore includes labor and shop overhead in the base of the "Use Tax," while excluding it from the base of the "Sales Tax." Thus, the discrimination against the transaction which involves the interstate movement.

Obviously, the Collector would tax the Labor and Shop Overhead for the sole and only reason that it took place outside Louisiana. Halliburton contends that this is discrimination of the clearest and most elementary type.*

Halliburton concedes that (as an out-of-state "manufacturer-user") it brings these complex and vastly useful pieces of equipment into Louisiana, where they serve the Louisiana oil producers. And, Halliburton is quite willing to pay to the State of Louisiana a Use Tax in exactly the same sum as the Sales Tax would be, upon a comparable operation (by an intrastate "manufacturer-user") in Louisiana. But, says Halliburton, "No penalty should be levied upon us merely because we have our shops in Oklahoma and not in Louisiana." And Halliburton adds, "There should be no collection of toll at the Louisiana State line."

It is unequivocally clear that, if Halliburton operated entirely in Louisiana, and had its shops in Louisiana, there would be neither any sales tax, nor any use tax, upon the "labor and shop overhead" element which it put into its finished products. Halliburton respectfully submits that there should be no increase in its Louisiana tax burden, simply because it first creates its products in Oklahoma, and then

* Note the statutory disavowal of intent to tax interstate commerce. Sec. 305, at p. 83, infra.

moves them across the state line into Louisiana, where it uses them to serve Louisiana oil operators.*

Halliburton contends that such a tax, based solely upon the movement of goods in interstate commerce, is discriminatory and is an unconstitutional burden upon interstate commerce.

Second: **"The Isolated Sales Phase"**

The Louisiana Sales Tax Statute (R.S. 47:301(10)) provides specifically that:

> ". . . nor [shall the terms 'sale at retail'] include an isolated or occasional sale of tangible personal property by a person not engaged in such business."

The Louisiana Department of Revenue Sales Tax Regulations provide:

> "Art. 2-33 Casual and Isolated Sales—
>
> "The tax does not apply to casual and isolated sales by persons not engaged in the business of selling such tangible personal property. . . ."

It is clear, therefore, that a "casual and isolated sale, by a person not engaged in the business of selling . . ." the type of property at issue, is completely exempted from the Louisiana Sales Tax. This is uncontested.

The Collector of Revenue contends, and the Louisiana

* Suppose, hypothetically, that Oklahoma had a sales tax. The Louisiana statute would credit Halliburton with the 2% tax paid to Oklahoma upon the tangible physical properties incorporated in the finished items of equipment. (Sec. 305, infra, p. 83.) Louisiana would still demand a 2% use tax on the labor and shop overhead expended in assembling the finished item. This intangible element of "cost price" would be taxed (by Louisiana) if incurred in Oklahoma. It would not be taxed if incurred in Louisiana. Q. E. D.

Court has held, that the Louisiana statute and regulations cannot be construed to grant a comparable "isolated sales" exemption in the case of the use tax. The Collector concedes that an "isolated or casual" sale made in Louisiana is exempted from the Louisiana sales tax. The Collector contends, however, that the use tax, as levied by the taxing statute, properly falls upon the use, in Louisiana, of property which was acquired through an "isolated or casual sale" made in another state.

The issue is squarely raised here. Halliburton purchased certain oil field equipment from Spartan Tool and Service Company of Houston, Texas, when that concern went out of business. And it purchased an airplane from the "Western Newspaper Union, of New York." It is stipulated that neither of these vendors was in the business of selling such equipment. It is stipulated that such sales were "casual, occasional and isolated sales. . . ." (Stipulation of Facts, Par. VI, R. 60-61)

It is completely clear that if these "isolated sales" transactions had taken place within the borders of Louisiana, no sales tax would have fallen upon the transaction. Nor would any use tax have been incurred by anybody. This is stipulated.

We quote from the Stipulation of Facts:

> "It is further stipulated that the entire . . . [purchase price] . . . would not have been subject to the Louisiana Sales Tax or Louisiana Use Tax had the purchase of such equipment been made within the State of Louisiana." (Tr. 61)

The Collector's position, therefore, is that because these isolated sales occurred outside of Louisiana, the taxpayer must pay a two per cent "use" tax, that would not fall upon the

use of the properties if the transactions had occurred in Louisiana. It is clear that this use tax is demanded by the Collector solely because the isolated sales transactions occurred outside Louisiana and the goods thereafter were brought across the state line. Thus, the Collector concedes that, but for this element of interstate transportation, he would not be demanding this tax money at all.

Suppose Halliburton had taken delivery of the newspaper company's airplane at the Moisant Airport, in New Orleans, so that the sale was a Louisiana transaction. Obviously—no sales tax on this "isolated sale transaction." In the present case, the state demands the 2% use tax solely because the "isolated sale transactions" took place outside Louisiana and, thereafter, the airplane, etc., were transported, in interstate commerce, across the Louisiana state border line.

The taxpayer's contention that this discriminatory result is unconstitutional is precisely upheld in *State v. Bay Towing and Dredging Company, Inc.*, 265 Ala. 282, 90 So. 2d 743 (Alabama, S. Ct., 1956). See discussion, infra, p. 32.

**How Federal Questions Were Presented:**

There is no issue in this case other than whether or not the Louisiana taxing statute, as construed by the Louisiana Collector and the Louisiana Supreme Court, is offensive to the Federal Constitution. The issue was raised in the initial pleadings filed, and throughout all phases of the case.

The following is quoted from the original petition* filed by Halliburton:

* The initial pleading, R. 10, et seq.

"XI.

"As to each of the aforesaid three phases of this case, the taxpayer alleges—inter alia—that the Use Tax, if interpreted and applied as the Collector would interpret and apply it here would cast upon the taxpayer (petitioner) a burden more onerous than that which would be levied by the Louisiana Sales and Use Tax had the transactions involved occurred in Louisiana; that a state Use Tax may be upheld as reasonable, legal, and constitutional only insofar as the burden thereof is equal to, and not in excess of the burden of the Sales Tax of that same state, to which Sales Tax said Use Tax is complementary. And the taxpayer further alleges that:

"A. The assessment proposed by the Collector, insofar as it results in a greater use tax liability than would be imposed under the sales tax if the transactions had taken place in Louisiana, is contrary to the terms and wording of the Louisiana taxing statute, as well as contrary to the intent and purposes of the Louisiana Legislature in enacting the taxing statute; and

"B. The practical effect of the Collector's proposed assessment is to subject goods moving [in] interstate commerce to a greater tax liability than would be imposed in the same situation, if all of the operative facts had occurred within the State of Louisiana, and therefore, the taxing statute (if interpreted and applied as the Collector would interpret and apply it here) would amount to a discrimination against interstate commerce prohibited by the Commerce Clause of the United States Constitution; and

"C. The interpretation and application of the Louisiana Use Tax Statute, as proposed here by the

Collector, is so unreasonable, arbitrary and capricious, and is so without regard to the true facts, and the economic realties of the factual situations, as to amount to a denial of due process of law within the meaning of the 'due process' clause of the United States Constitution.

"XII.

"Regulation of interstate commerce is a function explicitly reserved to the Congress of the United States by virtue of the Constitution of the United States and particularly Article I, Section 8, Clause 3 thereof, and the tax here demanded and contended for by the Collector of Revenue of Louisiana directly infringes on that right of regulation vested in the Federal Congress, for the reason, among others, that [it] is an attempt by the State of Louisiana to lay a tax on the privilege of engaging in interstate commerce and upon the carrying on of the business of interstate commerce.

"XIII.

"Petitioner alleges that it would be deprived of its property without due process of law contrary to the protection and guaranty granted under the Constitution of the United States and particularly under the Fourteenth Amendment thereof and under Article I, Section 2, of the Constitution of the State of Louisiana should it be required to pay said taxes and the refund herein claimed be denied to it."

That the federal constitutional issue was at issue throughout the case is made plain by the following language from opinion of the Louisiana Supreme Court:

"Halliburton brought suit for a return of the amount

in dispute, supra, alleging that the Use Tax, if interpreted and applied as the Collector would interpret and apply it to Halliburton, would cast upon the taxpayer (Halliburton) a burden more onerous than that which would be levied by the Louisiana Sales and Use Tax had the transactions involved occurred in Louisiana; and, that a state Use Tax may be upheld as reasonable, legal and constitutional, only insofar as the burden thereof is equal to and not in excess of the burden of the Sales Tax of that same state, to which Sales Tax said Use Tax is complementary. Plaintiff further alleged that the tax demanded of it infringed upon the right of regulation of interstate commerce by Congress (Article I, Section 8, Clause 3, Constitution of the United States), in that it was an attempt by the State of Louisiana to lay a tax on the privilege of engaging in interstate commerce and upon the carrying on of the business of interstate commerce. It still further alleged that it would be deprived of its property without due process of law, contrary to the protection and guaranty granted under the Constitution of the United States and particularly under the Fourteenth Amendment thereof and under Article I, Section 2, of the Constitution of the State of Louisiana, should it be required to pay the tax assessed.

"The trial court agreed with plaintiff and rendered judgment in its favor after trial. . . ."

* * *

"We conclude that under the rulings of the above authorities the 'use tax' as applied to plaintiff does not infringe upon the regulation of interstate commerce by Congress."

* * *

"Plaintiff endeavors to set forth the alleged inequality of the use tax as applied to it by arguing that if a

local oil well servicing company had manufactured its own equipment in Louisiana it would only have had to pay a sales tax on the component parts employed, whereas plaintiff has been assessed a use tax not only on the component parts but also on the cost of labor and shop overhead. Plaintiff argues, as set forth, supra, that its burden, as compared to that of a local taxpayer, is so unequal as to constitute a violation of the 14th Amendment to the United States Constitution and of Article I, Section 2, of the Constitution of Louisiana."

* * *

" 'What does "equal protection of the laws" mean as applied to taxation? Equal protection cannot be said to be denied by a statute which operates alike on all persons and property similarly situated, or by proceedings for the assessment and collection of taxes which follow the course customarily pursued in the state.' "

* * *

"We do not find that the Louisiana Use Tax treats any person differently from any other person in a like circumstance. All users are subjected to the same rate of tax; there is no arbitrary or unreasonable distinction. The law contains no hostility nor discrimination; it singles out no class of persons as subjects for its assessment.

"We do not find that the use tax as herein applied imposes an unconstitutional burden on plaintiff."

* * *

". . . plaintiff relies on the case of *State of Alabama v. Bay Towing & Dredging Company, Inc.*, 90 So. 2d 743, wherein the Supreme Court of Alabama stated:

" 'As we see it, if the use tax act is construed as

imposing a tax on the use in this state of tangible personal property purchased outside the state in casual and isolated sales transactions, such tax would constitute an unlawful discrimination against interstate commerce, contrary to the Commerce Clause of the United States Constitution, Const. art. 1, sec. 8, cl. 3, since no similar or equivalent tax burden is imposed in connection with the purchase of such property in casual and isolated sales transactions within the state. . . .

"We might say at the outset that we do not feel constrained to follow the Alabama case, supra, because we find that the instant matter does not involve a question of interstate commerce."

". . . we find no discrimination nor deprivation of property without due process of law. . . ." (Record, at pp. 121, 128, 129, 130, 132, and 133)

Thus the federal constitutional issues relating to

1. The Interstate Commerce Clause;

2. The Due Process Clause; and

3. The Equal Protection of the Laws Clause

were sole questions in this case. Those questions were squarely raised in the original pleadings and were actively at issue throughout. The trial court held that the Louisiana tax statute was invalid, as offensive to the United States Constitution under all three clauses, and granted the refund sought ($43,325.63). The Louisiana Supreme Court reversed and upheld the Louisiana tax statute as valid, finding that it does not

offend any constitutional rights of the taxpayer. From this latter ruling, Halliburton has appealed to this Court.

## THE QUESTIONS ARE SUBSTANTIAL

**The Law:**

In the landmark decision in the *Northwestern States Portland Cement Company* case (1959)* this Court held that a state may levy a **non-discriminatory** net income tax upon concerns who had theretofore claimed exemption therefrom under the Interstate Commerce clause of the Federal Constitution.

In zealous exercise of its new found freedom to tax the interstate operator, Louisiana now asserts its right to levy an excise tax upon an interstate operation which is heavier and more burdensome than the same tax would be upon the identical operation if it were conducted wholly within the state border lines. Louisiana frankly asserts that it may discriminate against the interstate business and tax it more heavily than its purely intrastate competitor.

Your Honors did not authorize such discrimination. In the *Portland Cement Company* case, this Court said:

> "From the quagmire [of prior decisions] there emerge, however, some firm peaks of decision which remain unquestioned.
>
> "It has long been established doctrine that **the Commerce Clause** gives exclusive power to the Congress to regulate interstate commerce, and its failure to act on the

* *Northwestern States Portland Cement Company v. Minnesota*, and *Williams v. Stockham Valves & Fittings, Inc.*, 358 U. S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421, 67 ALR 2d 1292 (1959).

subject in the area of taxation nevertheless **requires that interstate commerce shall be free from any direct restrictions or impositions by the States.** Gibbons v. Ogden, (US) 9 Wheat 1, 6 L ed 23 (1824). In keeping therewith a State 'cannot impose taxes upon persons passing through the state, or coming into it merely for a temporary purpose' such as itinerant drummers. Robbins v. Shelby County Taxing Dist. 120 US 489, 493, 494, 30 L ed 694, 696, 7 S. Ct. 592 (1887). Moreover, **it is beyond dispute that a State may not lay a tax on the 'privilege' of engaging** in interstate commerce, Spector Motor Service, Inc. v. O'Connor, 340 U. S. 602, 95 L ed 573, 71 S. Ct. 508 (1951). Nor may a State impose a tax **which discriminates against interstate commerce either by providing a direct commercial advantage to local business,** Memphis Steam Laundry Cleaner, Inc. v. Stone, 342 U. S. 389, 96 L ed 436, 72 S. Ct. 424 (1952); Nippert v. Richmond, 327 U. S. 416; 90 L ed 760, 66 S. Ct. 586, 162 ALR 844 (1946), or by subjecting interstate commerce to the burden of 'multiple taxation,' Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157, 98 L ed 583, 74 S. Ct. 396 (1954); J. D. Adams Mfg. Co. v. Storen, 304, U. S. 307, 82 L ed 1365, 58 S. Ct. 913, 117 ALR 429 (1938). Such impositions have been stricken because **the States, under the Commerce Clause, are not allowed 'one single-tax worth of direct interference with the free flow of commerce.'** Freeman v. Hewitt, 329 U. S. 249, 256, 91 L ed 265, 274, 67 St. Ct. 274 (1946)." (at p. 427. Emphasis supplied)

Appellant submits that Louisiana is here levying an excise tax upon the "privilege of engaging in interstate commerce." Appellant submits that the tax here at issue clearly "discriminates against interstate commerce . . . by providing a direct commercial advantage to local business"; that the Louisiana Collector's position is an open flaunting of the prohibitory language of decision above quoted.

**The Discrimination:**

The Louisiana Collector has stipulated that he would discriminate. He demands the use tax from Halliburton (to the extent of some $40,000) while stipulating frankly that, if Halliburton conducted its entire operation in Louisiana (instead of partially in other states and partially in Louisiana), he would not be demanding any tax money at all.

We quote from the Collector's stipulations relating to both phases of this case:

**First: The Labor and Shop Overhead Phase—**

> **"If Halliburton had . . . operated . . . at a location within the State of Louisiana,** there would have been a sales tax due to the State of Louisiana upon the cost of materials purchased in Louisiana and a Use Tax on materials purchased outside Louisiana; but **there would have been no Louisiana sales tax or use tax due upon the Labor and Shop Overhead."** (R. 58)

**Second: The Isolated Sale Phase—**

> ". . . the entire . . . [purchase price] **would not have been subject to the Louisiana Sales Tax or Louisiana Use Tax had the purchase of such equipment been made within the State of Louisiana."** (R. 61)

The Collector stipulates that, if this were a purely Louisiana (intrastate) operation, the excise tax would not be demanded. Yet he demands it in this case. And the Louisiana Supreme Court has held that the added element of interstate activity and interstate transportation properly gives rise to the additional tax. Louisiana frankly discriminates against inter-

state commerce ". . . by providing a direct commercial advantage to local business. . . ."

**The Decision of the Louisiana Supreme Court—***

Halliburton submits that the situation here is of surpassing simplicity and clearness, viz.,

I. It is the law that a state may not, by its taxes discriminate against interstate commerce by providing a direct commercial advantage to local business. *Portland Cement* case, supra.

II. The Collector had stipulated that the excise tax he demands here would not be due ". . . if Halliburton . . . operated at a location within the State of Louisiana."

How, then, could the Supreme Court of Louisiana possibly conclude that the tax does not discriminate against, and burden, interstate commerce? How could it conclude that no "direct commercial advantage" is given to the purely local operator?

It is difficult to get at the heart of the Louisiana decision. Its language strikes only glancing blows at the problem.

First, the Court points out that the Collector would treat the use tax as if it were a property tax. We quote:

"The Collector urges that the district court erred in not finding that the incidence of the Louisiana Use Tax is non-discriminatory; that it is equal in its application because it is upon the use of tangible personal property after it has been withdrawn from commerce; that the

* Reproduced as Appendix "A," p. 49, infra.

**combined effect and purpose of the Sales Tax and Use Tax is to insure that all tangible personal property used or consumed in the State of Louisiana bears a 2% tax,** either at the time of its original sale at retail in the state or at the time of its first use in the state if a 2% sales tax has not already been paid by the user to any other state."

Of course, it is settled that the use tax is not a "property tax." It is an excise tax upon the privilege of using.* The Louisiana Supreme Court concedes this and quotes from the *Henneford* case,

"The [use] tax is not upon operations of interstate commerce, but upon the privilege of use after commerce is at an end.

"Things acquired or transported in interstate commerce may be subjected to a property tax, **non-discriminatory in its operation,** when they have become part of the common mass of property within the state of destination.

* * *

"For like reasons they may be subjected, when once they are at rest, to a **non-discriminatory** tax upon use or enjoyment.

* * *

"A **non-discriminatory** tax upon local sales . . . has never been regarded as imposing a direct burden upon interstate commerce. . . ." (127 So. 2d, at p. 508)

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*Even if a "property tax" approach could be fairly adopted, this would not eliminate the open "discrimination." The **property tax** would be greater, if the labor and shop overhead element of "cost" were incurred outside Louisiana, than it would be if the construction and assembly work were done in Louisiana.

Then the Louisiana Court (ignoring the matter of "discrimination") said:

> "We conclude that . . . the use tax as applied to the plaintiff [Halliburton] does not infringe upon the regulation of interstate commerce by Congress. The taxed matter had definitely come to rest in Louisiana and had acquired a situs in the State." (at pp. 508-509)

Next, addressing itself to the question of discrimination, the Louisiana Court said:

> "Plaintiff endeavors to set forth the alleged inequality of the use tax as applied to it by arguing that if a local oil well servicing company had manufactured its own equipment in Louisiana it would only have had to pay a sales tax on the component parts employed, whereas plaintiff has been assessed a use tax not only on the component parts but also on the cost of labor and shop overhead. Plaintiff argues, as set forth, supra, that its burden, as compared to that of a local taxpayer, is so unequal as to constitute a violation of the 14th Amendment to the United States Constitution and of Article I, Section 2, of the Constitution of Louisiana." (at p. 509)

Then the Louisiana opinion quotes Cooley on Taxation, viz.,

> " 'What does "equal protection of the laws" mean as applied to taxation? Equal protection cannot be said to be denied by a statute which operates alike on all persons and property similarly situated, or by proceedings for the assessment and collection of taxes which follow the course customarily pursued in the state.' " (at p. 509)

Finally the Louisiana Supreme Court simply concludes that the Louisiana tax (although it falls more heavily upon

the interstate operator) is not "discriminatory" because the discrimination is only "incidental"! The Court put it this way:

> "We do not find that the Louisiana Use Tax treats any person differently from any other person in a like circumstance. All users are subjected to the same rate of tax; there is no arbitrary or unreasonable distinction. The law contains no hostility nor discrimination; it singles out no class of persons as subjects for its assessment.
>
> "We do not find that the use tax as herein applied imposes an unconstitutional burden on plaintiff. Plaintiff's comparison, supra, is not apposite. There must be an incidence of taxation; there must be an occurrence which brings the use tax into effect. In order to have an imposition of a sales tax, there must be a sale. Likewise, to have a levy of a use tax, property must come to rest in the State after leaving interstate commerce, and there must be a user of the property in the State. In the instant case, the fabricated product was transported to, came to rest in, became part of the common mass of property in, and was used in Louisiana. The proper comparison would be between the use tax on the assembled equipment and a sales tax on the same equipment if it were sold. What takes place before the fabricated product leaves interstate commerce and enters the State of Louisiana to rest is not within the contemplation of the statute except for the determination of cost price. **Labor and shop overhead are considered incidentally together with other items as a basis for arriving at cost."** (at p. 510)

With reference to whether or not the 2% use tax can be put upon the Labor and Shop Overhead element of cost (which is the only issue in this phase of the case), the Court thus concludes:

> "What takes place before the fabricated product leaves

interstate commerce . . . is not within the contemplation of the statute **EXCEPT for the determination of cost price.**

"Labor and shop overhead are considered **incidentally** together with other items as a basis for arriving at cost." (at p. 510)*

Of course, the only issue at all here is whether or not it is discriminatory to include the labor and shop overhead (whether "incidentally" or otherwise), in the "determination of cost price," for purposes of the use tax calculation. It is the "determination of cost price" which fixes the tax.

The Louisiana court does not, and cannot, come to the point and say "We **include** the labor and shop overhead in the tax base for interstate operators. We **exclude** the labor and shop overhead from the tax base for local (intrastate) operators. Yet this is not discrimination. We give no 'direct commercial advantage to local business' as prohibited by the federal constitution."

Since the Louisiana court cannot face-up to the issue without such a resulting absurdity, the Court sideswipes the issue and says that:

"What takes place . . . [in] interstate commerce is not . . . [considered] . . .

". . . EXCEPT for the determination of cost price . . . .

"Labor and shop overhead are considered [only] incidentally . . . ."*

What Halliburton precisely complains of is the **inclusion** of an item (labor and shop overhead) in the tax base (in the

* Infra, pp. 64-65

"determination of cost price") where there is a multi-state transaction, where as the same item (labor and shop overhead) is—incidentally—**excluded** from the tax base in the purely intra-Louisiana situation.

Specifically, Halliburton says that Louisiana is here demanding $40,000 in tax moneys while, simultaneously, stipulating that

> "If Halliburton had . . . operated . . . at a location within . . . . Louisiana . . .
>
> "there would have been no . . . tax . . . ." (R. 58)

Let us suppose that Halliburton set up its construction shops in Texas, immediately adjacent to the Louisiana state line. And, let us suppose that a competitor of Halliburton (in exactly the same business) set up its shops just inside the Louisiana line, with a white-washed fence along the state line separating the two operations. When the Louisiana operator produced and used his equipment in Louisiana (a purely intra-state operation), there would be no tax on the labor and shop overhead element of cost. See stipulations. But for each piece of equipment which Halliburton produced on the Texas side (and then brought into Louisiana across that white-washed fence line), Louisiana would demand the two-per-cent tax on the labor-and-shop overhead element of the cost. The two operations would be identical, but—says Louisiana—the movement of the equipment across that state line is enough to give rise to the additional two-per-cent tax. This is the Louisiana Collector's avowed position.*

* Note the 2% inducement to establish the production shops in Louisiana.

With reference to the "Isolated Sale Phase," the Collector has similarly stipulated that, but for the element of interstate transportation, he would not be demanding the tax. The stipulation is that

> ". . . the entire . . . [purchase price] . . . would not have been subject to the Louisiana Sales Tax or Louisiana Use Tax had the purchase of such equipment been made in Louisiana." (R. 61)

If Halliburton had bought the casually purchased airplane at Moisant Airport, in New Orleans, so that the sale was a Louisiana transaction, it is stipulated that there would be no two-per-cent tax under the Louisiana Sales and Use Tax. Yet, because Halliburton purchased the airplane in New York and then flew it into Louisiana, the two-per-cent tax (under the same statute) is demanded. Clearly, it is only the element of interstate transportation which differentiates the two factual situations.

Yet the Louisiana Court brusquely disposes of this phase of the case by stating:

> ". . . we do not feel constrained to follow the *Alabama* case . . . because we find that the instant matter does not involve a question of interstate commerce." (R. 132)

> . . . we find no discrimination nor deprivation of property without due process of law." (R. 133)

Nevertheless, the fact remains that Louisiana demands that Halliburton pay $40,000 in taxes while stipulating that Halliburton would not have to pay the tax ". . . if Halliburton

had . . . operated . . . at a location within the State of Louisiana," (R. 58) and the transaction would be " . . . not subject to . . . tax had the purchase been made in Louisiana." (R. 61)

**The Conflicting Decision in Alabama—**

In *State v. Bay Towing & Dredging Company, Inc.*, 265 Ala. 282, 90 So. 2d 743 (1956), the Supreme Court of Alabama considered an "isolated sale" case exactly like the present case, except that the property involved in the "isolated sale" consisted of five barges.

The doctrine of the *Bay Towing* case is summarized in its syllabi, from which we quote:

Syl. 3. Commerce Key 63

"If state use tax is construed as imposing a tax on use in the state of tangible personal property purchased outside the state in casual and isolated sales transactions, such tax would constitute an unlawful discrimination against interstate commerce, contrary to commerce clause of the United States Constitution, in view of the fact no similar or equivalent tax burden is imposed in isolated sales transactions within the state. Code 1940, Tit. 51, § 788; U.S.C.A. Const. art. 1, § 8, Cl. 3." (90 So. 2d at p. 743)

Syl. 4. Commerce, Key 63

"If a state use tax integrated with a sales tax places a discriminatory burden upon transactions in interstate commerce, and such burden would not apply to local sales, use tax would become unconstitutional in its operation as violative of commerce clause of Federal Constitution. Code 1940, Tit. 51, Sec. 753, 788. U.S.C.A. Const. art. 1, Sec. 8, cl. 3."

In striking down the Alabama use tax, the Alabama Supreme Court said:

"The position taken by the state is that § 788, Tit. 51, as amended, supra, requires that the tax be paid on tangible personal property purchased outside of the state and brought within the state for storage, use or consumption whether the seller of such property is engaged in the business of dealing in such property or not; that the wording of Section 788 shows such to be the clear legislative purpose. On the other hand, **Bay Company's insistence is that the sales tax and the use tax are complementary, one to the other; that the two laws must be construed together as one integrated, cohesive system of taxation; that unless property would be subject to the sales tax, had the sale occurred within this state, then the use tax cannot apply when the sale occurs without the state; that the property here involved would not be subject to the sales tax had the sale taken place here, and hence is not subject to the use tax. The trial court sustained Bay Company's contention, in which we concur.**

"(1,2) While the sales tax is levied on the transaction of sale itself and the use tax on the use of property after the sale is completed, it seems clear that the legislature intended that these two tax laws be considered together as embodying **one integrated, cohesive system of taxation.** We have held them to be **complementary, one to the other**, and that the two acts should be construed in pari materia. State v. Advertiser Co., 257 Ala. 423, 59 So. 2d 576; Paramount-Richards Theatres v. State, 256 Ala. 515, 55 So. 2d 812; State v. Southern Kraft Corp., 243 Ala. 223, 8 So. 2d 886; Layne Central Co. v. Curry, 243 Ala. 165, 8 So. 2d 839. The purpose and effect of the two laws is thus succinctly stated in Paramount-Richards Theatres v. State, supra (256 Ala. 515, 55 So. 2d 820):

"'The measure of the tax under the Sales Tax Act is the retail sales price of the goods; and under the Use Tax Act the measure of the tax is likewise the retail sales price of the goods.

"'The intent and result of this legislation is to impose a sales tax on sales which occur within the state, and a use tax (so called) measured by the retail sale price of goods purchased outside the state for use within the state. **For these reasons these two acts are referred to as being complementary, one to the other. The Use Tax Act is referred to as a compensatory measure**, to equalize the burden of the sales tax and prevent avoidance of the tax by the purchase of goods in interstate commerce or from outside of the state. * * *'

"(3) As we see it, **if the use tax is construed as imposing a tax on the use in this state of tangible personal property purchased outside the state in casual and isolated sales transactions, such tax would constitute an unlawful discrimination against interstate commerce, contrary** to the Commerce Clause of the United States Constitution, Const. art. 1, § 8, cl. 3, since no similar or equivalent tax burden is imposed in connection with the purchase of such property in casual and isolated sales transactions within the state. This principle was recognized in Paramount-Richards Theatres v. State, supra, where it was said:

"'If the legislature had imposed a rental tax only upon property shipped into the state in interstate commerce or purchased outside of the state, it would constitute a direct discrimination against interstate commerce, and such provision would therefore be invalid as being in conflict with the interstate commerce clause in the Constitution of the United States, art. 1, § 8, cl. 3. * * *'

"(4,5) The United States Supreme Court has held that a use tax, integrated with a sales tax, in a manner similar to ours, is **not violative** of the Commerce Clause **when such system of taxation does not discriminate against transactions in interstate commerce**, but merely equalizes the burden of taxation on purchases made in interstate commerce and on strictly local sales. *Henneford v. Silas Mason Co.*, 300 U.S. 577, 57 S.Ct. 524, 81 L.Ed. 814. Cf. Annotation, 129 A.L.R. 223; Annotation, 153 A.L.R. 609; Note, 54 Colm.L.Rev. 261. **However, if such a system of taxation places a discriminatory burden on transactions in interstate commerce, which would not apply to local sales, the use tax would become unconstitutional in its operation.** Paramount-Richards Theatres vs State, supra; Anderson v. Mullaney, 9 Cir., 191 F.2d 123, 129, affirmed 342 U.S. 415, 72 S.Ct. 428, 96 L.Ed. 458; Best & Co. v. Maxwell, 311 U.S. 454, 455, 61 S.Ct. 334, 85 L.Ed. 275; Hale v. Bimco Trading Co., 306 U.S. 375, 59 S.Ct. 526, 83 L.Ed. 771. As said in Best & Co. v. Maxwell, supra (311 U.S. 454, 61 S.Ct. 335):

> "'The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce. * * *'

**"It seems clear to us that if the sales of the barges had taken place in Alabama there would be no sales tax due because the barges were purchased in 'casual' or 'isolated' sales transaction from concerns not engaged in the business of selling barges but engaged solely in the business of hauling for hire. Therefore, if the use tax act should be construed as imposing the tax on 'casual' and 'isolated' sales in interstate commerce there would result a clear discrimination against such sales."** (90 So. 2d at pp. 746-747)

". . . in the instant case if Bay Company had bought the barges in Alabama, there would be no sales tax due. Accordingly, if the use tax act should be construed as imposing a tax there would be, as a result, **a clear discrimination against Bay Company's interstate sales transactions**. . . ." (at p. 748)

**Conflicting Results in Other States:**

The result in **North Dakota** and **Ohio** is in accord with the Alabama decision, and directly contrary to the Louisiana decision herein. Further, the Supreme Court of **California** has clearly indicated that it disagrees with the Louisiana decision.

Between pages 118 and 119 of the Louisiana Record filed in this Court, is a copy of Halliburton's (blue) brief filed in the Louisiana Supreme Court. At page 45, et seq., of that brief, the ruling of the **North Dakota** Tax Commissioner is quoted and discussed, That ruling precisely supports Halliburton's position on the "labor and shop overhead" phase of this case.*

* In his ruling of August 6, 1956, Counsel for the **North Dakota** Commissioner, said:

"**If these amendments are construed so as to impose a use tax on the total cost of only those items fabricated or manufactured outside this state by a contractor for his use in this state but not on the total cost of similar items fabricated or manufactured in this state by the contractor from materials purchased outside the state, then I believe there is discrimination** on the basis of origin of the finished product such as would be repugnant to the 'privileges and immunities' and 'equal protection' clauses of the fourteenth amendment to the Federal Constitution and to section 2 of Article 4 of the Federal Constitution relating to privileges and immunities of citizens of each state. See Ex Parte Smith, 100 Fla. 1, 128 So. 864, and cases cited therein, and 16A C.J.S. 226-227.

"**Considering the serious constitutional considerations** involved and

The similar conclusions of the **Ohio** Department of Taxation is discussed and quoted at p. 50, et seq., of that blue brief.†

The **California** decision in point is *Chicago Bridge & Iron Company v. Johnson*, 19 Cal. 2d 162, 119 P. 2d 945 (1941). There the California Use Tax was carefully construed to exclude the "labor and shop overhead" element from the use tax base and, having so construed it, the California Supreme Court then found that (in view of such exclusion) the California Use Tax did not offend the federal "interstate commerce clause." The California decision is quoted and discussed at pp. 52-53 of the (blue) brief filed in the Louisiana Supreme Court.

At pp. 30-34 of the (blue) brief, Halliburton quotes pertinent language from Hartman, *State Taxation of Interstate*

the legislative purpose of providing a single comprehensive plan of taxation through a retail sales use tax law, it is my conclusion that 'total cost' as used in the 1955 amendment to subsection 5 of section 57-4001 **should be construed to mean only the cost of materials** used in fabricating, compounding, or manufacturing tangible personal property by a person for storage, use, or consumption **by that person.**

† The Ohio Department of Taxation issued Circular No. 18 dated March 1, 1954, CCH Ohio State Reporter, paragraph 60-371.70, which states the position of the Ohio Department of Taxation to be as follows:

".70 **Tax base for producer-consumer***

"In the case of consumer who produces the tangible personal property used by him, the tax base is the usual and ordinary consideration paid for such tangible property.

"It is the position of the Department that the 'usual and ordinary consideration paid **'shall be construed to mean the cost of the raw material** to the producer-consumer **so as to place such a person in the same category under both the sales and use tax laws and avoid the discrimination that would otherwise exist as to a non-resident producer-consumer."**

"* Hereinabove, we have pointed out that Halliburton is obviously a *'manufacturer-user,' or 'producer-consumer.'*"

*Commerce*. We respectfully refer this Court to those enlightening quotations. Of particular interest is the following quotation from Hartman:

> "While the compensating use tax has been uniformly cleared of any discriminatory effects, in reaching that conclusion the Court has made an assumption that may be open to some question from an economic standpoint. An assumption by the Court that the tax burden on the consumers of locally bought goods is at least equal to the use tax burden on purchasers of out-of-state goods seems necessarily implicit in the finding that the compensating use tax does not discriminate against interstate commerce. **For, only if there is an equivalency of tax burden on the two types of purchases can it be said that the purchasers of out-of-state goods are not discriminated against.** (Emphasis supplied) at p. 167.

**Louisiana Plans Further Discrimination:**

Louisiana Act 51 of 1959* amended the Sales Tax act to exempt from the sales tax materials and supplies going into vessels "built in Louisiana shipyards," as well as the gross sales prices of such vessels when sold by the builders thereof.

The Louisiana Collector of Revenue would discriminate, however, against a vessel built outside Louisiana, and then brought into Louisiana across the state line. He asserts that as to such a vessel, moved in interstate commerce, Louisiana has the right to collect a use tax measured by the full construction cost price of the vessel. Of course, this is a forthright attempt to give Louisiana shipbuilders a commercial advantage over competitive shipyards in other states.

* La. R.S. of 1950, 47:305.1 Infra, p. 84.

At the Tulane Institute of Mineral and Tidelands Law, Nov. 14, 1959, Mr. Charles D. Marshall of the New Orleans bar summarized the situation:*

"APPLICATION OF THE LOUISIANA USE TAX TO PROPERTY ACQUIRED IN OTHER STATES

"The original justification for the use tax was the necessary protection of the state and its commercial enterprises against out-of-state purchasing to avoid the sales tax. Thus, the use tax has many times been said to be a complement of the sales tax. Constitutionality of the use tax was sustained by the United States Supreme Court on that basis. In *Henneford v. Silas Mason Co.*, that Court said:

> "'When the account is made up, the stranger from afar is subject to no greater burdens as a consequence of ownership than the dweller within the gates. The one pays upon one activity or incident, and the other upon another, but the sum is the same when the reckoning is closed. Equality exists. . . .'

"While it is difficult to form a logical pattern out of all the decisions of the United States Supreme Court, there is one thought which has been expressed again and again in those decisions, and that is that **a state cannot by its tax laws discriminate against interstate commerce.**[42] If a state did not have a sales tax law at all, but imposed only a use tax on property imported from another state, the discrimination against interstate commerce would be

* Mr. Marshall's address is reproduced in XXXV Tulane Law Review 183.

[42] *Henneford v. Silas Mason Co.*, 300 U.S. 577 (1937), and *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959), are important illustrations.

too obvious for argument.[43] If, instead, such state did have a general sales tax law but exempted certain property when it was bought within the state while taxing the use of the same exempted property when it was bought outside the state, the principle is the same. The use tax would be discriminatory because of the unequal exemptions.

**"As a matter of principle, then, the use tax can never be any broader in its application to property imported into Louisiana than would the sales tax be if the property were purchased here in the first place.** The regulations under the Louisiana sales tax seem to agree: they contain a general statement that the use tax applies only where the sales tax would apply if the property had been sold in this state.[44] The Louisiana Supreme Court has used broad language to the same effect.[45] There are strong implications in the law itself to that end.[46] Nevertheless, the Department of Revenue is contending in at least two situations that the use tax is broader than the sales tax.

"In the first situation, **the Department maintains** that even though, prior to the 1959 Statute, sales tax might not have been due upon the construction of a vessel in Louisiana, **nevertheless, in the case of a vessel built outside Louisiana and brought into Louisiana, the state has the right to collect a use tax measured by the full construction price of the vessel.** The attorneys for the Department of Revenue advised that they have been suc-

[43] See *Memphis Steam Laundry v. Stone*, 342 U.S. 389 (1952); *Walling v. Michigan*, 116 U.S. 446 (1886), for statements of the controlling principle.

[44] Regulations, art. 2-3.

[45] *Chrysler Corp. v. New Orleans*, 235 La. 123, 114 So.2d 579 (1959); *Fontenot v. S. E. W. Oil Corp.*, 232 La. 1011, 95 So.2d 638 (1957); *Mouledoux v. Maestri*, 197 La. 525, 2 So.2d 11 (1941).

[46] La. R.S. of 1950, 47:303, states that the importer shall pay a use tax "the same as if the said articles had been sold at retail for use or consumption in this state."

cessful in collecting substantial amounts of taxes under that approach. It is nevertheless the belief of the writer that the Department of Revenue cannot succeed in court with that approach, because, as a matter of statutory interpretation, the Louisiana use tax does not have a broader application than the sales tax, and further, even if it did, **the use tax would to that extent be a plain discrimination against interstate commerce.**

"The second instance in which the representatives of the Department of Revenue claim that the use tax is broader than the sales tax is with regard to the casual sales. In Louisiana, the sales tax does not apply to an isolated or occasional sale by a person not engaged in the business of making such sales.[47] However, the Department of Revenue maintains that there is no such thing as a 'casual use.' Thus, if one buys a drilling rig in Texas from a casual seller and takes delivery of it in Texas, the subsequent importation of the rig into Louisiana will result in a claim of use tax. Yet, if the sale had been made locally in Louisiana, where it would qualify as a casual sale for sales tax purposes, the Department would admit the transaction to be exempt. Discrimination against interstate commerce is evident in this position also.[48]

"In line with its attitude on these other issues, the Department of Revenue will, no doubt, try to collect use tax on vessels of fifty or more tons load displacement built outside Louisiana and imported into the state after enactment of Act 51 of 1959. It will be recalled that the 1959 Statute only extends its favors to vessels 'built in Louisiana.' As in the two instances discussed above, that requirement constitutes a discrimination against interstate commerce. The consequence is that the words 'built in

[47] La. R.S. of 1950, 47:301.

[48] *State v. Bay Towing & Dredging Co.*, 265 Ala. 282, 90 So.2d 743 (1956). Litigation on this issue is now pending in the Louisiana courts.

Louisiana' will have to be regarded as not written. Vessels built outside Louisiana must be entitled to the same privileges and exemptions as are the ones which have been built here. It may take litigation to settle the issue but the proper result seems reasonably clear.

* * *

"If it is correct that the materials used in repairs to vessels built in Louisiana are exempt, then, the provisions of the 1959 statute notwithstanding, the same exemption must, in order to avoid discrimination against interstate commerce, run in favor of vessels built outside Louisiana, provided, of course, such vessels are of the necessary qualifying size. Thus the requirement that the vessels be 'built in Louisiana' may have to be disregarded by the courts here also." (XXXV Tulane L. Rev. at pp. 194, 195 and 198)

## CONCLUSION

Appellant taxpayer's position is simply this:

I. The Use Tax falls upon the use of goods imported across state lines, *i.e.*, upon transactions in interstate commerce.

II. The Use Tax has been upheld, as constitutional, and as **not** a discriminatory burden upon interstate commerce, SOLELY BECAUSE (in the case then at issue) it **did not exceed the sales tax**, but was merely complementary to the sales tax and precisely equal to the sales tax, and—therefore—the use tax did not "discriminate" against the interstate transaction. *Henneford v. Silas Mason Company*, 300 U.S. 577, 81 L. Ed. 814, 57 S. Ct. 524.

III. Therefore, whenever the use tax (falling solely on **inter**state transactions) is more onerous than the sales tax (falling on comparable **intra**state transactions) then the use tax loses the fiat of the *Henneford* decision, and is unconstitutional **because it does discriminate** against the transactions which are in interstate commerce.

The taxpayer, Halliburton, contends that, **in any case** where the burden of the use tax is more onerous than the sales tax (on the comparable intrastate transaction) would be, then the use tax—as so applied—is not supported by the *Henneford* decision, and the use tax statute is violative of the federal constitution.

If, ". . . the stranger from afar . . ." is to bear a burden no heavier than that of ". . . the resident of Louisiana . . ." (as the Collector concedes, and even argues), then the only comparison that can be made is to compare **the burden which falls upon the taxpayers** in the two cases, by asking three simple questions:

1. What is the tax burden upon the **out-of-state taxpayer**, the "stranger from afar"?

2. What is the tax burden upon the **intra-state taxpayer**, the Louisiana resident?

3. **Are these two tax burdens equal?**

The Collector has stipulated that Halliburton (or a competitor of Halliburton in the same line of endeavor) would

pay no sales or use tax if it set up its shops, and operated, in Louisiana. Yet the Collector demands a 2% use tax from Halliburton. How can the Collector seriously argue that this is equality of treatment? The answer is that he cannot.

Can the "compensating" USE TAX of a state, in any case, reach further or be more burdensome than the SALES TAX of that state, to which latter tax the Use Tax is supposed to be complementary? Can the burden of the Use Tax (falling upon an out-of-state "manufacturer-user") be heavier than the burden of the sales tax which would fall upon the comparable (and competing) intra-state "manufacturer-user"?

Suppose, in a given state, that the two-per-cent Sales Tax (which falls upon intra-state sales) were totally repealed, but that the two-per-cent Use Tax were retained, in such manner that it fell only upon the use of goods purchased outside the state and then imported across state lines. Would the Use Tax, in such a case be constitutional? We respectfully submit that it would not. The Use Tax (upon use of imported goods) was upheld by the United States Supreme Court in the *Henneford* case, *supra*, because (and only "because") it was a compensatory and complementary tax, coextensive and coterminous, with the Sales Tax of the same state. If the Sales Tax were totally repealed, then there would be no support for the Use Tax (solely levied on imported goods). The *Henneford* doctrine would not apply. The Use Tax (upon use of imported goods) could not stand alone, in the absence of a similar and coextensive Sales Tax upon the comparable intra-state situation.

Suppose, again, that the Sales Tax were partially repealed. Suppose, for example, that the Louisiana Sales Tax statute

was amended to exclude the sale of automobiles in Louisiana. And suppose, at the same time, that the law continued to levy a two-per-cent **Use** Tax, solely upon the use in Louisiana of automobiles purchased outside of the state, and then brought into the state, across the state line. Is it not obvious that this would discriminate, to the extent of the 2% tax, against interstate transactions, in favor of the comparable intra-state transactions? Is this not the type of "discrimination" which is forbidden by the Commerce Clause and by the Due Process Clause of the United States Constitution? Can a contrary argument be seriously advanced?

Suppose the Use Tax were increased to 3%,* and the (intra-state) Sales Tax kept at 2%, would not this be unconstitutional discrimination?

Does it not follow, that **in any and every case whatsoever** (and particularly in the present case) where the burden of the Use Tax extends beyond that of the Sales Tax and where the Use Tax falls more heavily upon the interstate situation than the Sales Tax would fall upon the comparable intrastate situation, then the Use Tax, as so applied, is unconstitutional and void, as violative of the Federal Constitution.

Where the Sales Tax ends, the Use Tax must end.

As the Supreme Court of Alabama said:

"(4,5) The United States Supreme Court has held that a use tax, integrated with a sales tax, in a manner similar to ours, is not violative of the Commerce Clause when such system of taxation does not discriminate against

* Or, increased to 50%? Or, 100%?

transactions in interstate commerce, but merely equalizes the burden of taxation on purchases made in interstate commerce and on strictly local sales. . . . [citations] **However, if such a system of taxation places a discriminatory burden on transactions in interstate commerce, which would not apply to local sales, the use tax would become unconstitutional in its operation.** . . . [citations] As said in Best & Co. v. Maxwell, supra (311 U.S. 454, 61 S. Ct. 335):

> "The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce. * * *"

If the interstate **Use** Tax can exceed the intrastate **Sales** Tax, where is the line to be drawn? Could the Use Tax be fixed at 50% and the Sales Tax at 2%, thus creating a tax wall around the state?

In the present case the **Louisiana Collector his stipulated that he would discriminate**, and would tax only the "stranger from afar," while exempting Louisiana operators. We submit that the Federal Constitution forbids this.

It is submitted that the position of the taxpayer, Halliburton, is completely sound; that all existing authority supports its position; that no authority to the contrary exists anywhere; that the Constitution of the United States strikes down the position of the Louisiana Collector, which is arbitrary and capricious, and violative of the commerce clause of the federal constitution and of the Fourteenth Amendment.

It is further submitted that the issues here are most substantial; that the federal questions are of nationwide importance; that this Court ought to give plenary consideration to this case to resolve the conflict of the Louisiana decision with that in Alabama, and with the results in North Dakota, Ohio and California; that the substantial federal question (whether a state may levy a discriminatory excise tax on interstate transactions) ought to be heard on its merits, upon brief and oral argument, and finally decided by this High Court.

Respectfully submitted,

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Benjamin Brown Taylor, Jr.

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Baton Rouge, Louisiana.

Baton Rouge, Louisiana
July 19, 1961

## PROOF OF SERVICE

I, Benjamin Brown Taylor, Jr., one of the Attorneys for Halliburton Oil Well Cementing Company, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of July, 1961, I served a copy of the foregoing Jurisdictional Statement, and its Appendices, on Roland Cocreham, Collector of Revenue of the State of Louisiana (and successor in office to James S. Reily and Robert L. Roland, earlier parties hereto), Appellee in connection with this Appeal, by delivering the same to his counsel of record, Mr. Chapman Sanford, at his office in the Capitol Annex Building, Baton Rouge, Louisiana.

Benjamin Brown Taylor, Jr.

# APPENDIX "A"

## OPINION OF THE

# Supreme Court of Louisiana

## No. 44,934

**HALLIBURTON OIL WELL CEMENTING COMPANY**

**-Appellant,**

*versus*

**JAMES S. REILY,**
**COLLECTOR OF REVENUE OF THE**
**STATE OF LOUISIANA,**

**Appellee.**

**Rendered: February 15, 1961**
**Reported ____ La. ____, 127 So. 2d 502**

**Rehearing Denied March 20, 1961**

*On Appeal from the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana. Honorable Jess Johnson, Judge.*

HAMLIN, Justice.

The following two questions were presented for our determination on this appeal from a judgment rendered in favor of Halliburton Oil Well Cementing Company and against Robert L. Roland,[1] Collector of Revenue of the State of Lou-

[1] James S. Reily, originally named as defendant, was lawfully succeeded in office by Robert L. Roland, who was substituted as defendant on July 16, 1959.

isiana, in the sum of $43,325.63, plus 2% interest from December 13, 1956, until paid:

(1) In the calculation of the Louisiana Use Tax (LSA-R. S. 47:301 et seq.) assessed on equipment brought into the State of Louisiana from another state, should such tax be levied only on the component parts of the whole, where the owner himself fabricated and assembled the whole or finished product outside of the State of Louisiana, or should the tax be levied on the cost price of the finished fabricated product as set forth in the statute, supra, so as to include labor and shop overhead?

(2) Is machinery or equipment purchased in another state through the transactions of so-called isolated sales and later brought into the State of Louisiana for use subject to the Louisiana Use Tax?

Halliburton Oil Well Cementing Company (hereinafter referred to as Halliburton) is engaged in the business of servicing oil wells throughout the oil producing states of the United States, including Louisiana. Its principal place of business is maintained in Duncan, Oklahoma, and there it manufactures, assembles, installs, and builds up specialized oil well service units which it employs in its oil well service operations. Halliburton procures from various vendors throughout the United States raw materials, semi-finished, and finished articles necessary for the manufacture, assembly, installation, and build-up of well service units. When a well service unit has been completely processed at Duncan, Oklahoma, and has been tested for operation, it is assigned to one of Halliburton's various field camps in the United States, where it obtains a permanent situs unless transferred to another field camp loca-

tion where greater use may be made of it. A certain number of these units came to rest in Louisiana and obtained a permanent situs therein servicing oil wells located in Louisiana. Halliburton's books are kept in Oklahoma; they reflect the cost value of the units as comprising material cost, labor cost, and shop overhead.

In addition to the above units, Halliburton keeps in Louisiana certain cementing service units it purchased from the Spartan Tool and Service Company of Houston, Texas, when that company determined that it should no longer continue in the business of servicing oil wells, and an airplane purchased from the Western Newspaper Union of New York, which company is not regularly engaged in the business of selling airplanes.

For the years 1952, 1953, 1954, and 1955, Halliburton regularly filed with the State of Louisiana tax returns showing the amount of use tax money, as reflected by its calculations, due the State of Louisiana by it on service units employed in the State. Such amounts were paid to the State of Louisiana at the time of filing the statutory use tax returns.

On December 13, 1956, after lengthy correspondence and numerous conferences, Halliburton paid to the Collector of Revenue of the State of Louisiana (hereinafter referred to as Collector), under protest (LSA-R.S. 47:1576), a deficiency tax assessment of $57,278.17, representing principal and interest, and also paid additional interest of $142.83; it denied that $43,189.27, plus a proportionate part of the additional interest, was due the State of Louisiana. By stipulation the deficiency tax assessment was allocated in the following manner:

| *Phase* | *Principal* | *Interest* | *Total* |
|---|---|---|---|
| 1. Labor and shop overhead | $30,942.20 | $5,296.23 | $36,238.43 |
| 2. Cost price versus depreciated value | 2,296.83 | 386.15 | 2,682.98 |
| 3. Isolated sales | 3,789.20 | 615.02 | 4,404.22 |
| Total amount in dispute | $37,028.23 | $6,297.40 | $43,325.63 |
| Amount not in dispute | 12,063.03 | 2,032.34 | 14,095.37 |
| Totals | $49,091.26 | $8,329.74 | $57,421.00 |

**Halliburton brought suit for a return of the amount in dispute, supra, alleging that the Use Tax, if interpreted and applied as the Collector would interpret and apply it to Halliburton, would cast upon the taxpayer (Halliburton) a burden more onerous than that which would be levied by the Louisiana Sales and Use Tax had the transactions involved occurred in Louisiana; and, that a state Use Tax may be upheld as reasonable, legal and constitutional, only insofar as the burden thereof is equal to and not in excess of the burden of the Sales Tax of that same state, to which Sales Tax said Use Tax is complementary. Plaintiff further alleged that the tax demanded of it infringed upon the right of regulation of interstate commerce by Congress (Article I, Section 8, Clause 3, Constitution of the United States), in that it was an attempt by the State of Louisiana to lay a tax on the privilege of engaging in interstate commerce and upon the carrying on of the business of interstate commerce. It still further alleged**

**that it would be deprived of its property without due process of law, contrary to the protection and guaranty granted under the Constitution of the United States and particularly under the Fourteenth Amendment thereof and under Article I, Section 2, of the Constitution of the State of Louisiana, should it be required to pay the tax assessed.**

**The trial court agreed with plaintiff and rendered judgment in its favor after trial . . . on the following three issues:**[2]

> "1. For the purposes of calculating the Louisiana Use Tax upon items of specialized oil well equipment brought into the State of Louisiana and used therein by petitioner, the Collector included the actual cost to petitioner of the physical equipment and parts purchased by petitioner outside of Louisiana, and incorporated, outside of Louisiana, into such specialized equipment, and also the labor and shop overhead, incurred by petitioner in constructing said specialized oil field equipment in its shops in Oklahoma. Halliburton admits that the physical equipment and parts should properly be included in the tax base, but denies that the labor and shop overhead were properly included. (This phase of the matter is hereinafter sometimes called **'The labor and shop overhead phase'** of this case.)
>
> "2. For the purpose of calculating the Louisiana Use Tax upon items of specialized oil well equipment brought into the State of Louisiana and used herein by petitioner, the Collector used the 'original cost' of all equipment brought into the State of Louisiana without allowance for depreciation which had occurred prior to the equipment being brought into the State of Louisiana. Halliburton contends that the values used for computing the

[2] These issues appear in a stipulation of facts contained in the record.

use tax due on this equipment should not be greater than the fair market value of the equipment at the time it was brought into Louisiana. (This phase of the matter is hereinafter sometimes called **'The cost price versus depreciated value phase'** of this case.

"3. For the purpose of calculating the Louisiana Use Tax upon items of equipment brought into the State of Louisiana and used herein by petitioner, the Collector assessed the use tax on the value of certain equipment (including specialized oil well equipment and an airplane) which was purchased outside Louisiana by petitioner, from vendors not regularly engaged in the business of selling such items. Halliburton denies that any sales tax or use tax is due to the State of Louisiana on these items. (This phase of the matter is hereinafter sometimes called **'The isolated sale phase'** of this case.)"

Appellant (Collector) agrees that the trial court was correct in its ruling on Issue No. 2, "The cost price versus depreciated value phase." supra, in view of the holding of the Supreme Court of Louisiana, in the case of Fontenot v. S. E. W. Oil Corporation, 232 La. 1011, 95 So.2d 638, that a person importing an article for use in this state must pay the "use" tax the same as if it had been sold at retail, and that such use shall be considered equivalent to a sale at retail as of time of importation. The S. E. W. decision was handed down on May 6, 1957; the petition in the instant matter was filed on December 13, 1956, and judgment was rendered by the trial court on October 13, 1959. It is stated in appellant's brief:

"The Collector sought to impose the use tax on certain equipment which had sustained actual depreciation prior to its being brought into the State using as a tax base the original cost to the taxpayer. This Court has

now held in the case of Fontenot vs. S. E. W. Oil Corporation, 232 La. 1011, 95 So. 2d 638 (1957) that cost price means the fair market value of property at the moment of taxation—the time it becomes a part of the mass of property of the State and not original cost at the time of acquisition.

"The Collector agrees that the reasoning of the S.E.W. case correctly analyzes the intent and purpose of the Louisiana Use Tax and therefore will not argue this phase."

The Collector urges that the district court erred in not finding that the incidence of the Louisiana Use Tax is nondiscriminatory; that it is equal in its application because it is upon the use of tangible personal property after it has been withdrawn from commerce; that the combined effect and purpose of the Sales Tax and Use Tax is to insure that all tangible personal property used or consumed in the State of Louisiana bears a 2% tax, either at the time of its original sale at retail in the state or at the time of its first use in the state if a 2% sales tax has not already been paid by the user to any other state.

The law imposing the tax in question is contained in Chapter 2 of Title 47, Louisiana Revised Statutes, entitled, "Sales Tax." The provisions pertinent to this case read as follows:

LSA-R. S. 47:302:

"A. There is hereby levied a tax upon the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property, as defined herein, the levy of said tax to be as follows:

"(1) At the rate of two per centum (2%) of the sales price of each item or article of tangible personal property when sold at retail in this state; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the state, and to include each and every retail sale.

"(2) At the rate of two per centum (2%) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of the tax.

* * *

"C. * * *

"The tax levied in this Section shall be collected from the dealer, as defined herein, shall be paid at the time and in the manner hereinafter provided, and shall be, in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to taxes levied under the provisions of Chapter 3 of Sub-title II of this Title."

LSA-R.S. 47:301 (13) (As Amended):

"(13) 'Sales price' means the total amount for which tangible personal property is sold, including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed 6% of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included, nor shall the sales price include the

amount charged for labor or services rendered in installing, applying, remodeling or repairing property sold."

LSA-R. S. 47-301 (10):

"(10) 'Retail sale,' or 'sale at retail,' means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property, and shall mean and include all such transactions as the collector, upon investigations, finds to be in lieu of sales; provided that sales for resale must be made in strict compliance with the rules and regulations. Any dealer making a sale for resale, which is not in strict compliance with the rules and regulations, shall himself be liable for and pay the tax."

LSA-R. S. 47:301 (3):

"(3) 'Cost price' means the actual cost of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service cost, transportation charges or any other expenses whatsoever."

LSA-R. S. 47:301 (18):

"(18) 'Use' means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it shall not include the sale at retail of that property in the regular course of business."

LSA-R. S. 47:301 (4):

"(4) 'Dealer' includes every person who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution or for storage to be used or consumed in this state.

"'Dealer' is further defined to mean:

"(a) every person, who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state;

"(b) every person who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, or consumption, or distribution, or storage to be used or consumed in this state, tangible personal property as defined herein;

"(c) any person who has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this Chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of said tangible personal property;

"* * *"

LSA-R. S. 47:303:

"The tax imposed under R. S. 47:302 shall be collectible from all persons, as hereinafter defined, engaged as dealers, as hereinafter defined.

"On all tangible personal property imported, or caused to be imported, from other states or foreign country, and used by him, the 'dealer', as hereinafter defined, shall pay the tax imposed by this Chapter on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in this state. For the purposes of this Chapter, the use, or consumption, or distribution, or

storage to be used or consumed, in this state of tangible personal property, shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event."

LSA-R. S. 47:305:

" * * *

"It is not the intention of this Chapter to levy a tax upon articles of tangible personal property imported into this state, or produced or manufactured in this state, for export; nor is it the intention of this Chapter to levy a tax on bona fide interstate commerce. It is, however, the intention of this Chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state, of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state.

"The provisions of this Chapter shall not apply in respect to the use, or consumption, or distribution, or storage of tangible personal property for use or consumption in this state, upon which a like tax equal to, or greater than, the amount imposed by this Chapter has been paid in another state, the proof of the payment of such tax to be according to rules and regulations made by the collector of revenue. If the amount of tax paid in another state is not equal to, or greater than, the amount of tax imposed by this Chapter, then the dealer shall pay to the collector of revenue an amount sufficient to make the tax paid in the other state equal to the amount imposed by this Chapter.

"The 'use tax' under this Chapter shall not apply to tangible personal property owned or acquired in this state,

or imported into this state, or held or stored in this state, prior to June 7, 1948; but the 'use tax' will apply to all tangible personal property imported or caused to be imported into this state on or after that date, unless the property has previously borne a sales or use tax in another state, equal to or greater than the tax imposed by this Chapter."

The constitutionality of a use tax has been upheld by the Supreme Court of the United States in the case of Henneford, et al v. Silas Mason Co., Inc., et al, 300 U.S. 577, 57 S. Ct. 524, 81 L.Ed. 814; wherein the Court stated that one of the effects of such a tax must be that local retail sellers will be helped to compete upon terms of equality with retail dealers in other states who are exempt from a sales tax or any corresponding burden. The Court further stated that another effect, or at least another tendency, must be to avoid the likelihood of a drain upon the revenues of the state— buyers being no longer tempted to place their orders in other states in the effort to escape payment of the tax on local sales. The Court then asked, "Do these consequences which must have been foreseen, necessitate a holding that the tax upon the use is either a tax upon the operations of interstate commerce or a discrimination against such commerce obstructing or burdening it unlawfully?" It answered its question as follows:

"The tax is not upon the operations of interstate commerce, but upon the privilege of use after commerce is at an end.

"Things acquired or transported in interstate commerce may be subjected to a property tax, non-discriminatory in its operation, when they have become part of the common mass of property within the state of destination. * * * This is so, indeed, though they are

still in the original packages. * * * For like reasons they may be subjected, when once they are at rest, to a nondiscriminatory tax upon use or enjoyment. * * * The privilege of use is only one attribute, among many of the bundle of privileges that make up property or ownership. * * * A state is at liberty, if it pleases, to tax them all collectively, or to separate the faggots and lay the charge distributively. * * * Calling the tax an excise when it is laid solely upon the use (Vancouver Oil Co. v. Henneford, 183 Wash. 317, 49 P. (2d) 14) does not make the power to impose it less, for anything the commerce clause has to say of its validity, than calling is a property tax and laying it on ownership. 'A nondiscriminatory tax upon local sales * * * has never been regarded as imposing a direct burden upon interstate commerce and has no greater or different effect upon that commerce than a general property tax to which all those enjoying the protection of the state may be subjected.' Eastern Air Transport, Inc. v. South Carolina Tax Commission, 285 U.S. 147, 153, 52 S. Ct. 340, 341, 76 L.Ed. 673. A tax upon the privilege of use or storage when the chattel used or stored has ceased to be in transit is now an impost so common that its validity has been withdrawn from the arena of debate. * * * " See, Nelson v. Sears, Roebuck & Company, 312 U. S. 359, 85 L.Ed. 888, 61 S. Ct. 586; State v. Pape, 194 La. 890, 195 So. 356; Mouledoux v. Maestri, 197 La. 525, 2 So. 2d 11.

We conclude that under the rulings of the above authorities the "use tax" as applied to plaintiff does not infringe upon the regulation of interstate commerce by Congress. The taxed matter herein had definitely come to rest in Louisiana and had acquired a situs in the State.

Plaintiff endeavors to set forth the alleged inequality of the use tax as applied to it by arguing that if a local oil well

servicing company had manufactured its own equipment in Louisiana it would only have to pay a sales tax on the component parts employed, whereas plaintiff has been assessed a use tax not only on the component parts but also on the cost of labor and shop overhead. **Plaintiff argues, as set forth, supra, that its burden, as compared to that of a local taxpayer, is so unequal as to constitute a violation of the 14th Amendment to the United States Constitution and of Article I, Section 2, of the Constitution of Louisiana.**

> "When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guaranties of the Federal Constitution, the states have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests. The states, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the 14th Amendment, but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation. The state may tax real and personal property in a different manner. It may grant exemptions. The state is not limited to ad valorem taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, the state is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the 14th Amendment was intended to assure. * * *

"With all this freedom of action, there is a point beyond which the state can not go without violating the equal protection clause. The state may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The state is not at liberty to resort to a classification that is palpably arbitrary. The rule is generally stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' F. S. Royster Guano Co. v. Virginia, 253 U. S. 412, 415, 64 L.ed. 989, 990, 40 Sup. Ct. Rep. 560; * * *" Ohio Oil Company v. Conway, 281 U. S. 146. 74 L. Ed. 775, 50 S. Ct. 310. See, Allied Stores of Ohio, Inc. v. Bowers, 79 S. Ct. 437.

"What does 'equal protection of the laws' mean as applied to taxation? Equal protection cannot be said to be denied by a statute which operates alike on all persons and property similarly situated, or by proceedings for the assessment and collection of taxes which follow the course customarily pursued in the state.

"The inhibition of the amendment was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. It does not require equal rates of taxation on different classes of property, nor prohibit unequal taxation so long as the inequality is not based upon arbitrary classification. Legislation which, in carrying out a public purpose, is limited in its application, does not violate the provision if, within the sphere of its operation, it affects alike all persons similarly situated. In other words it does not prohibit special legislation, or legislation that is limited either in the objects to which it is directed, or by the territory within which it is to operate. It 'merely requires that all persons subjected to such

legislation shall be treated alike, under like circumstances and conditions; both in the privileges conferred and in the liabilities imposed.' The rule of equality requires no more than that the same means and methods be applied impartially to all of the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. * * * " Cooley Taxation, Vol. 1, Fourth Edition, Section 249, p. 533 et seq. See, also, Section 259, p. 558, same volume.

We do not find that the Louisiana Use Tax treats any person differently from any other person in a like circumstance. All users are subjected to the same rate of tax; there is no arbitrary or unreasonable distinction. The law contains no hostility nor discrimination; it singles out no class of persons as subjects for its assessment.

**We do not find that the use tax as herein applied imposes an unconstitutional burden on plaintiff.** Plaintiff's comparison, supra, is not apposite. There must be an incidence of taxation; there must be an occurrence which brings the use tax into effect. In order to have an imposition of a sales tax, there must be a sale. Likewise, to have a levy of a use tax, property must come to rest in the State after leaving interstate commerce, and there must be a user of the property in the State. In the instant case, the fabricated product was transported to, came to rest in, became part of the common mass of property in, and was used in Louisiana. The proper comparison would be between the use tax on the assembled equipment and a sales tax on the same equipment if it were sold. What takes place before the fabricated product leaves interstate commerce and enters the State of Louisiana to rest is not within the contemplation of the statute except for the determination of cost price. Labor and shop overhead are

considered incidentally together with other items as a basis for arriving at cost. LSA-R. S. 47:305 states that the intention of the Chapter is to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this State, of tangible personal property after it has come to rest in this State and has become a part of the common mass of property in this State.

LSA-R. S. 47:301 (3) recites that:

> " 'Cost price' means the actual cost of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service cost, transportation charges or any other expenses whatsoever."

LSA-R. S. 47:303, supra, states that use tax is paid on all articles of tangible personal property imported and used, the same as if the said articles had been sold at retail for use or consumption in this State. This section was properly interpreted in the case of Fontenot v. S. E. W. Oil Corporation, 232 La. 1011, 95 So. 2d 638, as follows:

> "According to this section the person importing an article for use in this state must pay the 'use' tax the same as if it had been sold at retail, and such use shall be considered equivalent to a sale at retail as of the time of importation. These provisions, along with the others above mentioned, clearly indicate that the 'use' tax is to be computed on the retail price the property would have brought when imported—that is, its then value or worth."

We conclude that with respect to Issue #1, "Labor and shop overhead phase," the use tax should be levied on "cost price" as set out in Chapter 2 of Title 47 of the Louisiana

Revised Statutes, entitled "Sales Tax," supra; the trial court was in error in omitting labor and shop overhead from the valuation assigned to the fabricated service units for use tax assessment.

We now pass to the question of "isolated sales" involved herein.

In support of its contention that the use tax cannot be imposed on tangible property which has come to rest in Louisiana but was purchased in another state through the method of isolated sales, plaintiff relies on the case of *State of Alabama v. Bay Towing & Dredging Company, Inc.*, 90 So. 2d 743, wherein the Supreme Court of Alabama stated:

> "As we see it, if the use tax act is construed as imposing a tax on the use in this state of tangible personal property purchased outside the state in casual and isolated sales transactions, such tax would constitute an unlawful discrimination against interstate commerce, contrary to the Commerce Clause of the United States Constitution, Const. art. 1, sec. 8, cl. 3, since no similar or equivalent tax burden is imposed in connection with the purchase of such property in casual and isolated sales transactions within the state. * * * "

We might say at the outset that we do not feel constrained to follow the Alabama case, supra, because we find that the instant matter does not involve a question of interstate commerce. The alleged taxable property had come to rest in Louisiana and had acquired a situs in this State. Henneford, et al v. Silas Mason Co., Inc., et al, supra.

Plaintiff argues that if the property alleged to be free from the assessment of the use tax (Issue #3, "Isolated sale

phase") had been purchased in Louisiana under similar transactions, it would not have been assessed with a sales tax, and that, therefore, the levy of the use tax on the property deprives plaintiff of its property without due process of law.

In LSA-R. S. 47:301 (10), we find the statement that the term "sale at retail" does not include an isolated or occasional sale of tangible personal property by a person not engaged in such business. In LSA-R. S. 47:305, it is directed that the dealer shall pay the tax imposed by Chapter 2 of Title 47, entitled "Sales Tax," on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in this state.

The exemption of an isolated sale from the provisions of the sales tax applies strictly to sales within the State of Louisiana; it has no effect whatsoever on any transactions without the state. The direction that the use tax shall be paid in the same manner as if the articles had been sold at retail applies to the method of payment. The property involved herein has not borne a similar tax in another state. Therefore, since the State of Louisiana levied the first assessment on property which was transported to, came to rest in, became part of the common mass of property in, and was used in Louisiana, we find no discrimination nor deprivation of property without due process of law.

We conclude that the trial court was in error in disallowing the tax claimed by the Collector as to Issue #3, "Isolated sale phase."

As stated, supra, the trial judge rendered judgment in favor of Halliburton and against the Collector for $43,325.63,

plus interest at the rate of 2% from December 13, 1956, until paid, and for all costs of this suit.

The Collector agrees that the trial court was correct in its ruling on Issue #2, "The cost price versus depreciated value phase," supra, amounting to $2,682.98. Therefore, Halliburton is entitled to the return of this amount.

The trial court was in error in decreeing that all costs be paid by the Collector. LSA-R. S. 13:4521 provides:

> "Except as hereinafter provided, neither the State, nor any parish, municipality, or other political subdivision, public board or commission, shall be required to pay court costs in any judicial proceeding instituted or prosecuted by or against the state or any such parish, municipality, or other political subdivision, board or commission. This Section shall have no application to stenographers' costs for taking testimony." See, also, Per Curiam on Further Application for Rehearing in Louisiana-Nevada Transit Co. v. Fontenot, Collector of Revenue, 233 La. 600, 97 So. 2d 409.

For the reason assigned, the judgment appealed from in favor of plaintiff is amended by reducing the amount thereof from $43,325.63 to $2,682.98, with interest at the rate of 2% per annum from December 13, 1956, until paid. Appellee to pay all costs, except such as must be borne by appellant under the provisions of LSA-R. S. 13-4521.

# APPENDIX "B"

# Louisiana Sales Tax Law

## Chapter 2 of Subtitle II of Title 47, Louisiana Revised Statutes of 1950, as Amended

## LOUISIANA SALES TAX LAW

Sec.

**§ 301. Definitions**

As used in this Chapter, the following words, terms and phrases have the meaning ascribed to them in this Section, except when the context clearly indicates a different meaning.

(1) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect. The term "business" shall not be construed to include the occasional and isolated sales by a person who does not hold himself out as engaged in business.

(2) "Collector" means the Collector of Revenue for the State of Louisiana and includes his duly authorized assistants.

(3) "Cost price" means the actual cost of the articles of tangible personal property without any deductions there-

from ~~on~~ account of the cost of materials used, labor or service cost, transportation charges or any other expenses whatsoever.

(4) "Dealer" includes every person who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution or for storage to be used or consumed in this state.

"Dealer" is further defined to mean:

(a) every person who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state;

(b) every person who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use or consumption, or distribution, or storage to be used or consumed in this state, tangible personal property as defined herein;

(c) any person who has sold at retail, or used, or consumed or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied in this Chapter has been paid on the sale at retail, the use, the consumption, the distribution or the storage of said tangible personal property;

(d) any person who leases or rents tangible personal property for a consideration, permitting the use or possession of the said property without transferring title thereto;

(e) any person who is the lessee or rentee of tangible personal property and who pays to the owner of such prop-

erty a consideration for the use or possession of such property without acquiring title thereto;

(f) any person, who sells or furnishes any of the services subject to tax under this Chapter;

(g) any person, as used in this act, who purchases or receives any of the services subject to tax under this Chapter;

(h) any person engaging in business in this state. "Engaging in business in this state" means and includes any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business or by having an agent, salesman or solicitor operating within the state under the authority of the seller of its subsidiary irrespective of whether such place of business, agent, salesman or solicitor is located in this state permanently or temporarily or whether such seller or subsidiary is qualified to do business in this state.

(5) "Gross sales" means the sum total of all retail sales of tangible personal property, without any deduction whatsoever of any kind or character except as provided in this Chapter.

(6) "Hotel" means and includes any establishment engaged in the business of furnishing sleeping rooms primarily to transient guests where such establishment consists of ten or more guest rooms under a single roof.

(7) "Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof

by the lessee or rentee, for a consideration, without transfer of the title of such property.

(8) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any parish, city or parish, municipality, district or other political subdivision thereof or any board, agency, instrumentality or other group or combination acting as a unit, and the plural as well as the singular number.

(9) "Purchaser" means and includes any person who acquires or receives any tangible personal property, or the privilege of using any tangible personal property, or receives any services pursuant to a transaction subject to tax under this Chapter.

(10) "Retail sale" or "sale at retail," means a sale to a consumer or to any person for any person other than for resale in the form of tangible personal property, and shall mean and include all such transactions as the collector, upon investigations, finds to be in lieu of sales; provided that sales for resale must be made in strict compliance with the rules and regulations. Any dealer making a sale for resale, which is not in strict compliance with the rules and regulations, shall himself be liable for and pay the tax.

The term "sale at retail" does not include sales of materials for further processing into articles of tangible personal property for sale at retail, nor does it include an isolated or occasional sale of tangible personal property by a person not engaged in such business.

(11) "Retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use or consumption, or storage to be used or consumed in this state.

(12) "Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, preparing or serving, for a consideration, of any tangible personal property, consumed on the premises of the person furnishing, preparing or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(13) "Sales price" means the total amount for which tangible personal property is sold, including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed 6 percent of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included, nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling or repairing property sold.

(Source: Act 143—195.)

(14) "Sales of services" means and includes the following:

(a) the furnishing of rooms by hotels and tourist camps;

(b) the sale of admissions to places of amusement, to athletic entertainment other than that of schools, colleges and universities, and recreational events, and the furnishing, for dues, fees, or other consideration, of the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities.

(Source: Act 290—1954)

(c) the furnishing of storage or parking privileges by auto hotels and parking lots;

(d) the furnishing of printing or overprinting, lithographic, multilith, blue printing, photostating or other similar services of reproducing written or graphic matter;

(e) the furnishing of laundry, cleaning, pressing and dyeing services, including by way of extension and not of limitation, the cleaning and renovation of clothing, furs, furniture, carpets and rugs, and the furnishing of storage space for clothing, furs and rugs.

(f) the furnishing of cold storage space and the furnishing of the service of preparing tangible personal property for cold storage where such service is incidental to the operation of storage facilities; and

(g) the furnishing of repairs to tangible personal property, including by way of illustration and not of limitation,

the repair and servicing of automobiles and other vehicles, electrical and mechanical appliances and equipment, watches, jewelry, refrigerators, radios, shoes, and office appliances and equipment.

(15) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state or for any purpose other than for sale at retail in the regular course of business.

(16) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, or other obligations or securities.

(17) "Tourist camps" means and includes any establishment engaged in the business of furnishing rooms, cottages or cabins to tourists or other transient guests, where the number of guest rooms, cottages, or cabins at a single location is six or more.

(18) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it shall not include the sale at retail of that property in the regular course of business.

(19) "Use tax" includes the use, the consumption, the distribution and the storage, as herein defined.

(Source: Acts 1948 No. 9, § 6.)

**§ 302. Imposition of tax.**

A. There is hereby levied a tax upon the sale at retail, the use, the consumption, the distribution, and the storage

for use or consumption in this state, of each item or article of tangible personal property, as defined herein, the levy of said tax to be as follows:

(1) At the rate of two per centum (2%) of the sales price of each item or article of tangible personal property when sold at retail in this state; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the state, and to include each and every retail sale.

(2) At the rate of two per centum (2%) of the cost price of each item or article of tangible personal property when the same is not sold but used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of the tax.

B. There is hereby levied a tax upon the lease or rental within this state of each item or article of tangible personal property, as defined herein; the levy of said tax to be as follows:

(1) At the rate of two per centum (2%) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to the said business.

(2) At the rate of two per centum (2%) of the monthly lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee to the owner of the tangible personal property.

C. There is hereby levied a tax upon all sales of services, as herein defined, in this State, at the rate of two per centum (2%) of the amounts paid or charged for such services.

The tax levied in this Section shall be collected from the dealer, as defined herein, shall be paid at the time and in the manner hereinafter provided, and shall be, in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to taxes levied under the provisions of Chapter 3 of Subtitle II of this Title.

(Source: Acts 1948, No. 9, § 2.)

**§ 303. Collection from dealer**

The tax imposed under R.S. 47:302 shall be collectible from all persons, as hereinafter defined, engaged as dealers, as hereinafter defined.

On all tangible personal property imported, or caused to be imported, from other states or foreign country, and used by him, the "dealer," as hereinafter defined, shall pay the tax imposed by this Chapter on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in this state. For the purposes of this Chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property, shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.

(Source: Acts 1948, No. 9 § 3.)

**§ 304. Treatment of tax by dealer**

The tax levied in this Chapter shall be collected by the dealer from the purchaser or consumer.

Every dealer located outside the state making sales of tangible personal property for distribution, storage, use, or consumption, in this state, shall at the time of making sales collect the tax imposed by this Chapter from the purchaser.

Dealers shall, as far as practicable, add the amount of the tax imposed under this Chapter in conformity with the schedule or schedules to be prescribed by the collector pursuant to authority conferred herein, to the sale price or charge, which shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts. Any dealer who neglects, fails or refuses to collect the tax herein provided, shall be liable for and pay the tax himself.

Where the tax collected for any period is in excess of two per centum (2%), the total tax collected must be paid over to the collector of revenue, less the compensation to be allowed the dealer, as hereinafter set forth. This provision shall be construed with other provisions of this Chapter and given effect so as to result in the payment to the collector of revenue of the total tax collected if in excess of two per centum (2%).

Any dealer who fails, neglects, or refuses to collect the tax herein provided, either by himself or through his agents or employees, shall, in addition to the penalty of being liable for and paying the tax himself, be fined not more than one hundred dollars, or imprisoned for not more than three months, or both.

No dealer shall advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or part of the tax or that he will relieve the purchaser from the payment of all or any part of the tax. Whoever violates this provision with respect to advertising shall be fined not less than twenty-five dollars nor more than two hundred fifty dollars, or imprisoned for not more than three months, or both. For a second or subsequent offense, the penalty shall be double.

The dealer or seller is permitted and required to state and collect the tax separately from the price paid by the purchaser.

The use of tokens is forbidden. The collector shall by regulations prescribe the method and the schedule of the amounts to be collected from the purchasers, lessees or consumers in respect to any receipt upon which a tax is imposed by this Chapter so as to eliminate fractions of one cent and so that the aggregate collections of taxes by a dealer shall, as far as practicable, equal two per centum of the total receipts from the sales, leases and services of such dealer upon which a tax is imposed. The schedules may provide that no tax need be collected from the purchaser, lessee or consumer upon receipts below a stated sum and may be amended from time to time so as to accomplish the purposes herein set forth.

In the event any political subdivision of this state is authorized to levy and levies a sales tax, the collector of revenue, in his discretion, may provide methods or schedules to accomplish the integration of the collection of the state and local taxes. Separate integrated bracket schedules may be provided for different kinds of transactions where all such transactions are not subject to both the state and the local tax.

(Source: Acts 1948, No. 9, § 4.)

**§ 305. Exclusions and exemptions from the tax**

The gross proceeds derived from the sale in this state of livestock, poultry and other farm products direct from the farm are exempted from the tax levied by this Chapter, provided that such sales are made directly by the producers. When sales of livestock, poultry and other farm products are made to consumers by any person other than producer, they are not exempted from the tax imposed by this Chapter; but every agricultural commodity sold by any person, other than a producer, to any other person who purchases not for direct consumption but for the purpose of acquiring raw product for use or for sale in the process of preparing, finishing or manufacturing such agricultural commodity for the ultimate retail consumer trade, shall be exempted from any and all provisions of this Chapter, including payment of the tax applicable to the sale, storage, use, transfer, or any other utilization of or handling thereof, except when such agricultural commodity is actually sold as a marketable or finished product to the ultimate consumer, and in no case shall more than one tax be exacted. For the purpose of this Section, "agricultural commodity," means horticultural, viticultural, poultry, farm and range products, and livestock and livestock products.

The "use tax," as defined herein, shall not apply to livestock and livestock products, to poultry and poultry products, to farm, range and agricultural products when produced by the farmer and used by him and members of his family.

The taxes imposed by this Chapter shall not apply to the following: Sales of used articles taken in trade, or a series of trades, as a credit or part payment on the sale of a new article, provided the tax levied by this Chapter is paid on

the full gross sales of the new article. In interpreting this provision, the term "new article" means the original stock in trade of the dealer and shall not be limited to newly manufactured articles. The original stock or article, whether it be a used article or not, shall be subject to the tax.

With respect to sale of automobiles and all kinds of motor vehicles that are subject to tax by this Chapter, it shall be the duty of the dealer to give to the purchaser at the time of the sale, a certificate or an affidavit, as may be determined by the collector, signed by the dealer, in such form as may be prescribed by the collector, showing the serial number, motor number, type and model of motor vehicle, and whether or not the tax imposed by this Chapter has been paid. If the tax has not been paid because of the fact that the motor vehicle was taken in trade and is not subject to tax, then the dealer shall give to the purchaser a certificate or an affidavit signed by the dealer showing that the motor vehicle is not subject to tax. The collector of revenue, if deemed necessary, may by rule and regulation require all dealers engaged in selling automobiles and motor vehicles of all kinds to make a report every fifteen days showing all sales of automobiles or other motor vehicles which are taxable and all sales of automobiles and motor vehicles which are not subject to tax, giving the name and address of each purchaser and a description, including serial number, motor number, type and model of each automobile or motor vehicle that has been sold during the period covered by the report.

The sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed, in this state, of the following tangible personal property is hereby specifically exempted from the tax imposed by this Chapter: Gaso-

line; steam; water (not including mineral water or carbonated water or any water put up in bottles, jugs, or other containers, all of which are not exempted); electric power or energy; newspapers; fertilizer, seeds and containers used for farm products when sold directly to the farmer; and natural gas.

Seeds (Act 427 - 1960)

It is not the intention of this Chapter to levy a tax upon articles of tangible personal property imported into this state, or produced or manufactured in this state, for export; nor is it the intention of this Chapter to levy a tax on bona fide interstate commerce. It is, however, the intention of this Chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state, of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state.

The provisions of this Chapter shall not apply in respect to the use, or consumption, or distribution, or storage of tangible personal property for use or consumption in this state, upon which a like tax equal to, or greater than, the amount imposed by this Chapter has been paid in another state, the proof of the payment of such tax to be according to rules and regulations made by the collector of revenue. If the amount of tax paid in another state is not equal to, or greater than, the amount of tax imposed by this Chapter, then the dealer shall pay to the collector of revenue an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by this Chapter.

The "use tax" under this Chapter shall not apply to tangible personal property owned or acquired in this state, or

imported into this state, or held or stored in this state, prior to June 7, 1948; but the "use tax" will apply to all tangible personal property imported or caused to be imported into this state on or after that date, unless the property has previously borne a sales or use tax in another state, equal to or greater than the tax imposed by this Chapter.

(Source: Acts 1948, No. 9, § 5.)

**§ 305.1 Exclusions and exemptions; ships and ships' supplies**

A. The tax imposed by R.S. 47:302 (A) (1) shall not apply to sales of materials, equipment and machinery which enter into and become component parts of ships, vessels, including commercial fishing vessels, or barges, of fifty tons load displacement and over, built in Louisiana nor to the gross proceeds from the sale of such ships, vessels, or barges when sold by the builder thereof.

B. The taxes imposed by R.S. 47:302 shall not apply to materials and supplies purchased by the owners or operators of ships or vessels operating exclusively in foreign or interstate coastwise commerce, where such materials and supplies are loaded upon the ship or vessel for use or consumption in the maintenance and operation thereof; nor to repair services performed upon ships or vessels operating exclusively in foreign or interstate coastwise commerce; nor to the materials and supplies used in such repairs where such materials and supplies enter into and become a component part of such ships or vessels; nor to laundry services performed for the owners or operators of such ships or vessels operating exclusively in foreign or interstate coastwise commerce, where the laundered articles are to be used in the course of the operation of such ships or vessels.

C. The provisions of this section do not apply to drilling equipment used for oil exploitation or production unless such equipment is built for exclusive use outside the boundaries of the state and is removed forthwith from the state upon completion.

D. The Collector shall promulgate rules and regulations designed to carry out the provisions of this section. Any transaction not strictly in compliance with such rules and regulations shall lose the exemption herein provided.

(Source: Act 51—1959)

**§ 305.3 Exclusions and exemptions; seeds used in planting of crops**

The tax imposed by R.S. 47:302(A) (1) shall not apply to the sale at retail of seeds for use in the planting of any kind of crops. The Collector shall promulgate rules and regulations designed to carry out the provisions of this section, and any transaction not strictly in compliance with such rules and regulations shall lose the exemption herein provided.

(Source: Act 427—1960)

**§ 306. Returns and payment of tax**

The taxes levied hereunder shall be due and shall be payable monthly. For the purpose of ascertaining the amount of tax payable all dealers shall, on or before the 20th day of the month following the month in which this tax becomes effective, transmit to the collector, upon forms prescribed, prepared and furnished by him, returns showing the gross sales, purchases, gross proceeds from lease or rental, gross payments for lease or rental, gross proceeds derived from sales of sevices, or gross payments for services, as the case

may be, arising from all taxable transactions during the preceding calendar month; and thereafter, like returns shall be prepared and transmitted to said collector by all dealers, on or before the 20th day of each month, for the preceding calendar month. These returns shall show any further information the collector may require to enable him to correctly compute and collect the tax levied. Every dealer at the time of making the return required hereunder, shall compute and remit to the collector the required tax due for the preceding calendar month; and failure to so remit such tax shall cause said tax to become delinquent.

Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto, in accordance with the rules and regulations the collector may prescribe.

For the purpose of compensating the dealer in accounting for and remitting the tax levied by this Chapter, each dealer shall be allowed two per centum (2%) of the amount of tax due and accounted for and remitted to the collector in the form of a deduction in submitting his report and paying the amount due by him; provided the amount due was not delinquent at the time of payment. Provided that municipalities are hereby authorized to pay compensation to their sales tax dealer in any amount designed by the governing body of said municipality.

The collector, for good cause, may extend, for not to exceed thirty days, the time for making any returns required under the provisions of this Chapter.

For the purpose of collecting and remitting to the state

the tax imposed by this Chapter, the dealer is hereby declared to be the agent of the state.

(Source: Act 491—1954)

**§ 306.1. Collection from interstate and foreign transportation dealers**

Persons, as defined in this Chapter, engaged in the business of transporting passengers or property for hire in interstate or foreign commerce, whether by railroad, railway, automobile, motor truck, boat, ship, aircraft or other means, may, at their option under rules and regulations prescribed by the Collector, register as dealers and pay the taxes imposed by R.S. 47:302A on the basis of the formula hereinafter provided.

Such persons, when properly registered as dealers, may make purchases in this state or import property into this state without payment of the sales or use taxes imposed by R.S. 47:302A at the time of purchase or importation, provided such purchases or importations are made in strict compliance with the rules and regulations of the Collector. Thereafter, on or before the 20th day of the month following the purchase or importation, the dealer shall transmit to the Collector, on forms secured by him, returns showing gross purchases and importations of tangible personal property, the cost price of which has not previously been included in a return to the state. The amount of such purchases and importations shall be multiplied by a fraction, the numerator of which is Louisiana mileage operated by the taxpayer and the denominator of which is the total mileage, to obtain the taxable amount of tax basis. This amount shall be multiplied by the tax rate to disclose the tax due.

Each such dealer, at the time of making the return required hereunder, shall remit to the Collector the tax due for the preceding calendar month as shown on the return.

(Source: Act 440—1958)

**§ 307. Collector's authority to determine the tax in certain cases**

A. In the event any dealer fails to make a report and pay the tax as provided in this Chapter or in case the dealer makes a grossly incorrect report or a report that is false or fraudulent, the collector shall make an estimate of the retail sales of such dealer for the taxable period, of the gross proceeds from rentals or leases of tangible personal property by the dealer, or the cost price of all articles of tangible personal property imported by the dealer for use or consumption or distribution or storage to be used or consumed in this state, and of the gross amounts paid or charged for services taxable; and it shall be the duty of the collector to assess and collect the tax together with any interest and penalty that may be accrued thereon, which assessment shall be considered prima facie correct and the burden to show the contrary shall rest upon the dealer.

B. In the event the dealer has imported tangible personal property and he fails to produce an invoice showing the cost price of the articles which are subject to tax, or the invoice does not reflect the true or actual cost, then the collector shall ascertain in any manner feasible the true cost price and shall assess and collect the tax, together with any interest and penalties that may have accrued, on the basis of the true cost as assessed by him. The assessment so made shall be considered prima facie correct, and the burden shall be on the dealer to show the contrary.

C. In the case of the lease or rental of tangible personal property, if the consideration given or reported by the dealer does not in the judgment of the collector, represent the true or actual consideration, then the collector is authorized to ascertain in any manner feasible the true or actual consideration and assess and collect the tax thereon together with any interest and penalties that may have accrued. The assessment so made shall be considered prima facie correct and the burden shall be on the dealer to show the contrary.

D. In the event such estimate and assessment requires an examination of books, records, or documents, or an audit thereof, then the collector shall add to the assessment the cost of such examination, together with any penalties accruing thereon. Such costs and penalties when collected shall be remitted to the State Treasurer in the same manner as the taxes are remitted to him by the collector.

(Source: Acts 1948, No. 9, § 8.)

**§ 308. Termination or transfer of business**

If any dealer liable for any tax, interest or penalty levied hereunder sells his business or stock of goods or quits the business, he shall make a final return and payment within fifteen days after the date of selling or quitting the business. His successor, successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, interest and penalties due and unpaid until such time as the former owner shall produce a receipt from the collector showing that they have been paid, or a certificate stating that no taxes, interest or penalties are due. If the purchaser of a business or stock of goods fails to withhold purchase money as above provided, he shall be personally

liable for the payment of the taxes, interest and penalties accrued and unpaid on account of the operation of the business by any former owner, owners or assigns.

(Source: Acts 1948, No. 9, § 9.)

**§ 309. Dealers required to keep records**

Every dealer required to make a report and pay any tax under this Chapter shall keep and preserve suitable records of the sales, purchases, or leases taxable under this Chapter, and such other books of accounts as may be necessary to determine the amount of tax due hereunder, and other information as may be required by the collector; and each dealer shall secure, maintain and keep, for a period of three years, a complete record of tangible personal property received, used, sold at retail, distributed, or stored, leased or rented, within this state by the said dealer, together with invoices, bills of lading, and other pertinent records and papers as may be required by the collector for the reasonable administration of this Chapter, and a complete record of all sales or purchases or services taxable under this Chapter. These records shall be open for inspection to the collector at all reasonable hours. The collector is authorized to require all dealers who take deductions on their sales tax returns for total sales under the minimum taxable bracket prescribed by him pursuant to R.S. 47:304 to support their deductions by keeping written or printed detail records of said sales in addition to their usual books and accounts.

Any dealer subject to the provisions of this Chapter who violates the provisions of this Section shall be fined not more than two hundred dollars, or imprisoned for not more than sixty days, or both, for any such offense.

(Source: Acts 1948, No. 9, § 11.)

**§ 310. Wholesalers and jobbers required to keep records**

All wholesale dealers and jobbers in this state shall keep a record of all sales of tangible personal property made in this state whether such sales be made for cash or on terms of credit. These records shall contain and include the name and address of the purchaser, the date of the purchase, the article purchased and the price at which the article is sold to the purchaser. These records shall be kept for a period of three years and shall be open to the inspection of the collector at all reasonable hours.

Whoever violates the provisions of this Section shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned for not less than ten days nor more than thirty days, or both, for the first offense. For the second or each subsequent offense, the penalty shall be double.

(Source: Acts 1948, No. 9, § 12.)

**§ 311. Collector's authority to examine records of transportation companies**

The collector is specifically authorized to examine at all reasonable hours, the books, records and other documents of all transportation companies, agencies, or firms operating in this state, whether they conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or are otherwise shipping articles of tangible personal property subject to the tax levied by this Chapter. When any such transportation company refuses to permit the examination of its books, as provided in this Section, the collector may proceed by rule against it, in term time or in vacation, in any court of competent jurisdiction in the

parish where such refusals occurred, to show cause why the collector should not be permitted to examine books, records or other documents. This rule may be tried in open court or in chambers, and in case the rule is made absolute, the same shall be considered a judgment of the court, and every violation thereof shall be considered as a contempt of court and punished according to law.

(Source: Acts 1948, No. 9, § 13.)

### § 312. Failure to pay tax on imported tangible personal property; grounds for attachment

The failure of any dealer to pay the tax and any interest, penalties, or costs due under the provisions of this Chapter on any tangible personal property imported from outside the state for use, consumption, distribution or storage to be used in this state, or imported for the purpose of leasing or renting the same, shall make the tax, interest, penalties, or costs ipso facto delinquent. This failure shall moreover be a sufficient ground for the attachment of the personal property imported wherever it may be found, whether the delinquent taxpayer is a resident or nonresident, and whether the property is in the possession of the delinquent taxpayer or in the possession of other persons.

It is the intention of this law to prevent the disposition of the said tangible personal property in order to insure payment of the tax imposed by this Chapter, together with interest, penalties and costs, and authority to attach is hereby specifically granted to the collector. The procedure prescribed by law in attachment proceedings shall be followed except that no bond shall be required of the State.

(Source: Acts 1948, No. 9, § 17.)

**§ 313. System of import permits; seizure and forfeiture of vehicles used in importing without permit**

A. In order to prevent the illegal importation of tangible personal property which is subject to tax, and to strengthen and make more effective the manner and method of enforcing payment of the tax imposed by this Chapter, the collector is hereby authorized to put into operation a system of permits whereby any person or dealer may import tangible personal property by truck, automobile, or other means of transportation other than a common carrier, without having the truck, automobile or other means of transportation seized and subjected to legal proceeding for its forfeiture. Such system of permits shall require the person or dealer who desires to import tangible personal property subject to tax imposed by this Chapter, to apply to the collector for a permit, stating the kind of vehicle to be used, the name of the driver, the license number of the vehicle, the kind or character of tangible personal property to be imported, the date, the name and address of the consignee, and such other information as the collector may deem proper or necessary. These permits shall be free of cost to the applicant and may be obtained at any of the branch offices of the department of revenue, including the branch offices located at Shreveport and Lake Charles.

B. The importation into this state of tangible personal property which is subject to tax, by truck, automobile, or other means of transportation other than a common carrier, without having first obtained a permit described above, (if the tax imposed by this Chapter has not been paid), is prohibited and shall be construed as an attempt to evade payment of the tax; and the truck, automobile, or means of trans-

portation other than a common carrier, as well as the taxable property may be seized by the collector in order to secure the same as evidence in a trial, and it shall be subject to forfeiture and sale in the manner provided for in this Chapter.

C. The collector is authorized in a summary proceeding, or by an action against the owner or operator of any truck, automobile or means of transportation other than a common carrier, used in the illegal importation and transportation of any article or articles of tangible personal property on which a tax is levied by this Chapter, and on which the tax has not been paid to demand the forfeiture and sale of the truck, automobile or other means of transportation, together with the said taxable property, used in the illegal importation and in violation of this Chapter.

D. In all cases where it is made to appear by affidavit that the residence of the owner of the automobile, truck or other means of transportation is out of the state, or is unknown to the collector, the court having jurisdiction of the proceeding shall appoint an attorney at law to represent the absent owner against whom the proceeding shall be tried contradictorily within ten days after the filing of the same. The affidavit may be made by the Collector or one of his assistants, or by the attorney representing the collector, if it is not convenient to obtain the affidavit of the collector or one of his assistants. The attorney appointed to represent the absent owner may waive service and citation of the petition or rule, but he shall not waive any legal defense. If, upon the trial of the proceeding, it is established that the automobile, truck, or other means of transportation, has been used to transport any article of tangible personal property upon which a tax is levied by this Chapter, and upon which

the tax has not been paid, without first having obtained a permit from the collector as provided herein, then the court shall render judgment accordingly, declaring the forfeiture of the taxable property and of the automobile, truck, or other means of transportation and ordering the sale thereof after ten days' notice by advertisement in the official parish paper where the seizure is made, by the civil sheriff of the parish of Orleans, or by the sheriff of the parish in which the seizure is made; this sale shall be made at public auction at the court house, to the highest bidder, for cash, and without appraisement. It is the intent and purpose of these proceedings to afford the owner of the automobile, truck or other means of transportation a fair opportunity for hearing in a court of competent jurisdiction. It is further the intent and purpose of these proceedings that the forfeiture and sale of the automobile, truck or other means of transportation, and of the taxable property being transported therein, shall be and operate as a penalty for the violation of this Chapter by the illegal transportation and importation of tangible personal property subject to the tax; and the payment of the tax due on the article upon which a tax is levied by this Chapter, at the moment of seizure or thereafter, shall not operate to prevent, abate, discontinue or defeat the forfeiture and sale of the property. All funds collected from the seized and forfeited property shall be paid into the state treasury and credited in the same manner as provided for the tax herein levied. The court shall fix the fee of the attorney representing the owner when appointed by the court, at a nominal sum not to exceed ten per centum (10%) to be taxed as costs and to be paid out of the proceeds of the sale of the property.

(Source: Acts 1948, No. 9, § 18.)

**§ 314. Failure to pay tax; rule to cease business**

Failure to pay any tax due as provided in this Chapter shall ipso facto, without demand or putting in default, cause the tax interest, penalties, and costs to become immediately delinquent, and the collector has the authority, on motion in a court of competent jurisdiction, to take a rule on the dealer, to show cause in not less than two or more than ten days, exclusive of holidays, why the dealer should not be ordered to cease from further pursuit of business as a dealer. This rule may be tried out of term and in chambers, and shall always be tried by preference. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the state, prohibiting the dealer from the further pursuit of said business until such time as he has paid the delinquent tax, interest, penalties and costs, and every violation of the injunction shall be considered as a contempt of court, and punished according to law. For the purpose of the enforcement of this Chapter and the collection of the tax levied hereunder, it is presumed that all tangible personal property imported or held in this state by any dealer is to be sold at retail, used or consumed, or stored for use or consumption in this state, or leased or rented within this state, and is subject to the tax herein levied; this presumption shall be prima facie only, and subject to proof furnished to the collector.

(Source: Acts 1948, No. 9, § 19.)

**§ 315. Sales returned to dealer; credit or refund of tax**

In the event tangible personal property sold is returned to the dealer by the purchaser or consumer or in the event the amount paid or charged for services is refunded or

credited to the purchaser or consumer after the tax imposed by this Chapter has been collected, or charged to the account of the purchaser, consumer, or user, the dealer shall be entitled to reimbursement of the amount of tax so collected or charged by him, in the manner prescribed by the collector; and in case the tax has not been remitted by the dealer to the collector, the dealer may deduct the same in submitting his return. Upon receipt of a sworn statement of the dealer as to the gross amount of such refunds during the period covered by the sworn statement, which period shall not be longer than ninety (90) days, the collector shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for the tax collected. This memorandum shall be accepted by the collector at full face value from the dealer to whom it is issued, in the remittance for subsequent taxes accrued under the provisions of this Chapter.

In cases where a dealer has retired from business and has filed a final return, a refund of tax may be made if it can be established to the satisfaction of the collector that the tax paid was not due.

(Source: Acts 1948, No. 9 § 20.)

**§ 316. Collector to provide forms**

The collector shall design, prepare, print and furnish to all dealers, or make available to them, all necessary forms for filing returns, and instructions to insure a full collection from dealers and an accounting for the taxes due; but failure of any dealer to secure these forms shall not relieve the dealer from the payment of the tax at the time in the manner herein provided.

(Source: Acts 1948, No. 9, § 25.)

### § 317. Cost of administration

The cost of preparing and distributing the report forms and paraphernalia for the collection of the tax, and for the inspection and enforcement duties required herein, shall be borne by the revenue produced by this Chapter and the collector shall withhold from the first sums realized on the collection of the tax levied hereunder, a sum not to exceed three hundred fifty thousand dollars ($350,000.00) per annum.

(Source: Acts 1948, No. 9, § 26.)

### § 318. Disposition of collections

All taxes collected under the provisions of this Chapter shall be paid to the collector, and the proceeds of all taxes collected under the provisions of this Chapter, less the commission to dealers, and the cost of collecting the taxes as herein provided for, shall be paid by the collector to the State Treasurer on or before the tenth day of the month following the collection of the tax; the State Treasurer shall credit the tax to a special fund, to be known as the Public Welfare Fund, and the Department of Public Welfare shall withdraw the same from the treasury for payment of old age assistance and other welfare purposes.

(Source: Acts 1948, No. 9, § 27.)